

1-10-2014

# Nampa Educ. Ass'n v. Nampa School Dist. No. 131 Clerk's Record Dckt. 41454

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Vol. 1 of 2

LAW CLERK

IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF IDAHO**

---

**NAMPA EDUCATION ASSOCIATION,**

**Petitioner-Respondent,**

**-VS-**

**NAMPA SCHOOL DISTRICT NO. 131,**

**Respondent-Appellant.**

---

Appealed from the District of the Third Judicial District  
for the State of Idaho, in and for Canyon County

Honorable MOLLY J. HUSKEY, District Judge

---

William F. Yost and Chip Giles  
YOST LAW, PLLC.  
P O Box 1275  
Nampa, Idaho 83653

Attorneys for Appellant

Paul J. Stark  
Idaho Education Association  
P O Box 2638  
Boise, Idaho 83701

---

Attorney for Respondent

---



41454

IN THE SUPREME COURT OF THE  
STATE OF IDAHO

NAMPA EDUCATION ASSOCIATION,	)	
	)	
Petitioner-Respondent,	)	
	)	Supreme Court No. 41454-2013
-vs-	)	
	)	
NAMPA SCHOOL DISTRICT NO. 131,	)	
	)	
Respondent-Appellant.	)	

Appeal from the Third Judicial District, Canyon County, Idaho.

HONORABLE MOLLY J. HUSKEY, Presiding

William F. Yost and Chip Giles, YOST LAW, PLLC., P. O. Box 1275,  
Nampa, ID 83653

Attorneys for Appellant

Paul. J. Stark, Idaho Education Association, P. O. Box 2638,  
Boise, ID 83701

Attorney for Respondent

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## Other Claims

Date		Judge
3/25/2013	New Case Filed-Other Claims	Molly J Huskey
	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Stark, Paul J (attorney for Nampa Education Association) Receipt number: 0019722 Dated: 3/25/2013 Amount: \$96.00 (Credit card) For: Nampa Education Association (plaintiff)	Molly J Huskey
	Filing: Technology Cost - CC Paid by: Stark, Paul J (attorney for Nampa Education Association) Receipt number: 0019722 Dated: 3/25/2013 Amount: \$3.00 (Credit card) For: Nampa Education Association (plaintiff)	Molly J Huskey
	Petition for Declaratory Judgment	Molly J Huskey
	Summons Issued	Molly J Huskey
4/18/2013	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Yost, William F III (attorney for Nampa School District No 131,) Receipt number: 0025311 Dated: 4/18/2013 Amount: \$66.00 (Check) For: Nampa School District No 131, (defendant)	Molly J Huskey
	Answer to Petition for Declaratory Judgment	Molly J Huskey
4/22/2013	Order to File Stipulated Trial Dates	Molly J Huskey
5/6/2013	Stipulation Regarding Proposed Trial Date (fax)	Molly J Huskey
5/7/2013	Hearing Scheduled (Court Trial 08/15/2013 09:00 AM) #2 Set One-day	Molly J Huskey
	Hearing Scheduled (Pre Trial 07/01/2013 08:15 AM) Conference	Molly J Huskey
	Hearing Scheduled (Conference - Status 07/29/2013 01:30 PM)	Molly J Huskey
5/13/2013	Order Setting Pretrial Conference, Status Conference, and Court Trial	Molly J Huskey
5/28/2013	Stipulation Re: Scheduling or Pre-Trial Dates (Fax)	Molly J Huskey
6/5/2013	Respondents Motion for Summary Judgment (fax)	Molly J Huskey
	Affidavit of Steve Kipp in support of Motion Sum Judgment (fax)	Molly J Huskey
	Memorandum in support of Motion for Summary Judgment (fax)	Molly J Huskey
	Notice Of Hearing 8-1-13 (fax)	Molly J Huskey
	Hearing Scheduled (Motion Hearing 08/01/2013 09:00 AM) Resp Mo sum Judgment	Molly J Huskey
7/1/2013	Request to Obtain Approval to Video Record, Broadcast or Photograph a Court Proceeding (fax)	Molly J Huskey
	Hearing result for Pre Trial scheduled on 07/01/2013 08:15 AM: Hearing Held Conference	Molly J Huskey
	District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: less than 100 pages	Molly J Huskey
7/5/2013	Plaintiffs Motion for Summary Judgment	Molly J Huskey
	Affidavit of Mandy Simpson in Support of Petitioners Motion for Summary Judgment	Molly J Huskey
	Petitioners Memorandum in Support of Petitioners Motion for Summary Judgment	Molly J Huskey
7/12/2013	Respondent's Reply to Petitioners Motion for Summary Judgment (fax)	Molly J Huskey

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## Other Claims

Date		Judge
7/17/2013	Petitioner's Memorandum in Opposition to Respondent's Motion for Summary Judgment (fax)	Molly J Huskey
7/25/2013	Respondents Reply to Petitioners Memorandum in Opposition to Respondents Motion for Summary Judgment (fax)	Molly J Huskey
	Petitioners Reply Memorandum in support of Petitioners Motion for Summary Judgment (fax)	Molly J Huskey
7/29/2013	Hearing result for Conference - Status scheduled on 07/29/2013 01:30 PM: Hearing Vacated	Molly J Huskey
7/30/2013	Petitioners Motion to Shorten Time (fax)	Molly J Huskey
	Stipulation Re: Hearing on Petitioner Motion to Shorten Time and Motion for Summary Judgment (fax)	Molly J Huskey
	Notice Of Hearing Re:Petitioners Motion to Shorten Time and Motion for Summary Judgment (fax) 8/1/2013	Molly J Huskey
8/1/2013	Hearing result for Motion Hearing scheduled on 08/01/2013 09:00 AM: Hearing Held - Cross Motions for Summary Judgment (UNDER ADVISEMENT)	Molly J Huskey
	District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: less than 100 pages	Molly J Huskey
	Hearing result for Court Trial scheduled on 08/15/2013 09:00 AM: Continued #2 Set One-day	Molly J Huskey
	Hearing Scheduled (Court Trial 10/21/2013 09:00 AM)	Molly J Huskey
8/16/2013	Order on Summary Judgment	Molly J Huskey
9/11/2013	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Eberharter-Maki / Tappen Receipt number: 0055124 Dated: 9/11/2013 Amount: \$18.00 (Check)	Molly J Huskey
9/16/2013	Notice Of Service of Respondents First Set of Interrogatories and Requests for Production of Documents to Petitioner (fax)	Molly J Huskey
9/27/2013	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Yost, William F III (attorney for Nampa School District No 131,) Receipt number: 0058411 Dated: 9/27/2013 Amount: \$109.00 (Check) For: Nampa School District No 131, (defendant)	Molly J Huskey
	Appealed To The Supreme Court (Respondent Nampa School District	Molly J Huskey
	Bond Posted - Cash (Receipt 58413 Dated 9/27/2013 for 200.00) \$200 Court Reporter	Molly J Huskey
	Bond Posted - Cash (Receipt 58414 Dated 9/27/2013 for 100.00) Clerks Record	Molly J Huskey
	Notice of Appeal	Molly J Huskey
10/2/2013	Petitioner's Request for Status Conference (Fax)	Molly J Huskey
	Notice Of Hearing Re: Petitioner's Request for Status Conference (Fax)	Molly J Huskey
	Hearing Scheduled (Motion Hearing 10/15/2013 01:15 PM) Petnr's Req for SC	Molly J Huskey
10/9/2013	S C - Order Remanding to District Court	Molly J Huskey

000002

Date: 12/2/2013

**Third Judicial District Court - Canyon County**

User: RANDALL

Time: 02:42 PM

ROA Report

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Case: CV-2013-0002962-C Current Judge: Molly J Huskey

Nampa Education Association vs. Nampa School District No 131

Nampa Education Association vs. Nampa School District No 131

Other Claims

Date		Judge
10/15/2013	Hearing result for Motion Hearing scheduled on 10/15/2013 01:15 PM: Hearing Held Petnr's Req for SC	Molly J Huskey
	District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: less than 100 pages	Molly J Huskey
	Hearing result for Court Trial scheduled on 10/21/2013 09:00 AM: Hearing Vacated	Molly J Huskey
10/17/2013	Final Judgment	Molly J Huskey
11/1/2013	Amended Notice of Appeal (fax)	Molly J Huskey

000003

Paul J. Stark, Esq.  
IDAHO EDUCATION ASSOCIATION  
620 North Sixth Street  
P.O. Box 2638  
Boise, Idaho 83701  
Telephone: (208) 333-8560  
Facsimile: (208) 344-1606

F I L 214 D  
A.M. P.M.  
MAR 25 2013  
CANYON COUNTY CLERK  
VLC DEPUTY

*Attorney for Petitioner*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

NAMPA EDUCATION ASSOCIATION,	)	
	)	Case No.: CV13-2962-C
Petitioner,	)	
	)	PETITION FOR DECLARATORY
vs.	)	JUDGMENT
	)	
NAMPA SCHOOL DISTRICT NO. 131,	)	
	)	
Respondent.	)	
_____	)	

COMES NOW the above-named Petitioner, the NAMPA EDUCATION ASSOCIATION ("NEA"), by and through its counsel of record, Paul J. Stark, General Counsel, Idaho Education Association, for and as claims against the above-named Respondents PETITIONS AND ALLEGES as follows:

**PARTIES**

1. At all times relevant hereto, the NEA was and is the recognized representative for the members of the Nampa Education Association ("Teachers").
2. Respondent Nampa School District No. 131 ("School District") is a corporate and political body existing and located within the county of Canyon, state of Idaho.

### **JURISDICTION AND VENUE**

3. The jurisdiction of this Court over this matter is pursuant to Idaho Code § 1-705.

4. Venue is proper in this Court pursuant to Idaho Code § 5-404. Jurisdiction and venue are proper in this court pursuant to Idaho Code §§ 5-404, 5-514, 10-1201, *et seq.*, and the Idaho State Constitution Art. V, 20.

### **FACTS GIVING RISE TO PETITIONER'S PETITION**

5. In the summer of 2012, the Teachers signed a Standard Teacher Contract on a form approved by the state superintendent of public instruction for the 2012-2013 school year.

6. The Standard Teacher Contract established the terms and conditions of the Teachers' employment for the 2012-2013 school year.

7. The Standard Teacher Contract form approved by the state superintendent of public instruction provides:

It is understood and agreed between the parties that this Contract is subject to the applicable laws of the State of Idaho, the duly adopted rules of the State Board of Education and the policies of the District which are, by reference, incorporated herein and made a part of this agreement the same as if fully set forth herein.

8. The Standard Teacher Contract form approved by the state superintendent of public instruction also provides:

The terms of this Contract shall be subject to amendment and adjustment to conform to the terms of either a Master Contract or the compensation established the Board of Trustees pursuant to Section 33-1274, Idaho Code, as such terms are applicable for the same school year as this Contract.

9. On or about the week of December 10, 2012, the School District began a systematic plan where teachers working for the School District were required to attend mandatory "emergency" meetings conducted by the teachers' immediate supervisory, often the teachers' building principal.

10. At those meetings, teachers were pressured by the School District to modify the terms of their Standard Teachers Contract by signing another contract for employment entitled "Addendum Contract."

11. The "Addendum Contracts," if signed, were an agreement to take four (4) unpaid furlough days between January and May, 2013.

12. The School District required that these "Addendum Contracts" be signed and returned no later than Monday, December 17, 2012.

13. On December 14, 2012, the Teachers wrote a letter to the Superintendent of the School District objecting on the basis that the "Addendum Contracts" violated Idaho Code §33-513(1) because the "Addendum Contracts" were not a written contract approved by the state superintendent of public instruction.

14. On December 18, 2012, the Teachers again wrote the School District objecting to the "Addendum Contracts" with the additional basis that the "Addendum Contracts" violated the Rules of the Idaho State Department of Education (IDAPA 08.02.01.150), which provide:

**DEVIATION FROM STANDARD EMPLOYMENT CONTRACT FORM.**

The State Superintendent of Public Instruction has approved a standard employment contract form. Any deviation from this contract form must be approved by the State Superintendent of Public Instruction and reviewed for reapproval once every three (3) years. (Section 33-513, Idaho Code)

15. The School District replied, disputing the Teachers' arguments.

**COUNT ONE**

***Declaratory Judgment***

16. Petitioner realleges and incorporates by reference hereby all the allegations contained in Paragraphs 1 through 15 of this *Petition* as if fully set forth herein.

17. The Standard Teachers Contract constitutes a binding and enforceable contract.

18. There is an actual controversy involving a genuine dispute between the Teachers

and the School District concerning their respective rights and duties under the Standard Teacher Contracts entered into for the 2012-2013 school year. Specifically, the parties hereto disagree concerning the interpretation of the "Addendum Contract" and whether the "Addendum Contract" is lawful under Idaho law.

19. Petitioner and Respondent have not sought to have their respective rights and duties adjudicated or determined in any other legal proceeding and until the aforesaid controversy is judicially determined as requested herein, none of the parties will be able to ascertain and act on their said rights and duties.

### **ATTORNEY FEES**

As a result of the Respondent's actions as set forth above, Petitioner has been required to enlist the services of Paul J. Stark, General Counsel to the Idaho Education Association, to prosecute this action and has incurred, and will continue to incur, costs and attorney fees for which it is entitled to a separate award pursuant to Idaho Code § 12-117 and Rule 54(e)(1) of the Idaho Rules of Civil Procedure as well as any other applicable statute or rule or contract between the parties, in an amount to be determined by the Court, or, if judgment is rendered by default, in the amount of Two Thousand Dollars (\$2,000.00).

### **PRAYER FOR RELIEF**

Petitioner Nampa Education Association prays for judgment against the Respondent, and each of them, as follows:

1. On each of the bases set forth herein, this Court enter a declaratory judgment pursuant to Idaho Code § 10-1201, *et seq.* declaring the "Addendum Contracts" to be unlawful and unenforceable;
2. For an award of attorney fees and costs;

3. For such other and further relief as the Court deems just and equitable.

DATED this 25<sup>th</sup> day of March, 2013.

IDAHO EDUCATION ASSOCIATION

By: 

Paul J. Stark, General Counsel  
Attorney for Petitioner Nampa Education  
Association

William F. Yost, ISB No. 1242  
Yost Law, PLLC  
4 Ogden Avenue  
PO Box 1275  
Nampa, Idaho 83653  
Telephone: 208-466-9222  
Facsimile: 208-466-1981

Attorney for Respondent

**F I L E D**  
A.M. 3:25 P.M.

**APR 18 2013**

**CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY**

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

NAMPA EDUCATION ASSOCIATION,	)	
	)	Case No. CV 2013-2962-C
Petitioner,	)	
	)	ANSWER TO PETITION FOR
vs.	)	DECLARATORY JUDGMENT
	)	
NAMPA SCHOOL DISTRICT NO. 131,	)	
	)	
Respondent.	)	
_____	)	

COMES NOW the Respondent, NAMPA SCHOOL DISTRICT NO. 131, by and through its counsel of record, William F. Yost, of Yost Law, PLLC, and as and for its answer to Petitioner's Petition on file herein, admits and denies and alleges as follows:

1. Respondent admits the allegations contained in paragraphs 2, 3, 4, 5, 7, and 17.
2. Respondent denies the allegations contained in paragraphs 1, 6, 9, 10, 11, 12, 13, 14, 15, 18, and 19.



3. In answering paragraph 8, Respondent can neither admit nor deny the allegations contained in those paragraphs as and for the reason that the documents referred to therein will speak for and establish the terms and conditions of the contract agreement.

4. In answering paragraph 16, Respondent answers and incorporates by reference all its answers to paragraphs 1 through 15, inclusive, of the Petition.

5. Respondent denies each and every allegation contained in the Petition not specifically admitted herein.

### **AFFIRMATIVE DEFENSES**

By stating certain defenses as "affirmative defenses," Respondent does so for the purpose of completeness and does not intend to suggest that it has the burden of proof of any such defense. Furthermore, Respondent has not had the opportunity to conduct discovery in this case and, by failing to raise an affirmative defense, cross-claim or counterclaim, does not intend to waive any such defense and/or claim, and Respondent specifically reserves the right to amend its answer to include additional affirmative defenses and to file any such cross-claim or counterclaim.

### **FIRST AFFIRMATIVE DEFENSE**

#### **No Cause of Action**

Petitioner's Petition fails to state a cause of action against Respondent upon which relief may be granted.

### **SECOND AFFIRMATIVE DEFENSE**

#### **Lack of Standing**

To the extent Petitioner lacks standing with respect to any claims, those claims should be dismissed.

### **THIRD AFFIRMATIVE DEFENSE**

#### **Compliance with Statutory Requirements**

The Petition must fail against Respondent, as Respondent was fulfilling required duties as provided by law.

### **FOURTH AFFIRMATIVE DEFENSE**

#### **Mootness**

To the extent any claim is moot or not ripe for adjudication, that claim should be dismissed.

### **FIFTH AFFIRMATIVE DEFENSE**

#### **Failure to Join an Indispensable Party**

To the extent Petitioner has failed to join an indispensable party with respect to any claims, those claims should be dismissed.

### **SIXTH AFFIRMATIVE DEFENSE**

#### **Estoppel**

To the extent Petitioner has been estopped from pleading a claim with respect to any claims, those claims should be dismissed.

### **SEVENTH AFFIRMATIVE DEFENSE**

#### **Failure of Contract**

To the extent there was not a valid contract between Petitioner and Respondent with respect to any claims, those claims should be dismissed.

### **EIGHTH AFFIRMATIVE DEFENSE**

#### **Failure of Consideration**

To the extent there was not sufficient consideration to create a valid contract between Petitioner and Respondent with respect to any claims, those claims should be dismissed.

## **NINTH AFFIRMATIVE DEFENSE**

### **Lack of Privity**

To the extent no privity of contract exists between Respondent and Petitioner with respect to any claims, those claims should be dismissed.

## **TENTH AFFIRMATIVE DEFENSE**

### **Illegality**

In the alternative, to the extent a contract existed between Petitioner and Respondent, and that contract was unenforceable due to illegality, with respect to any claims, those claims should be dismissed.

## **ELEVENTH AFFIRMATIVE DEFENSE**

### **Lack of Capacity**

To the extent Petitioner lacks capacity with respect to any claims, those claims should be dismissed, including, but not limited to, the following averments:

- (a) Petitioner alleges representation of unknown parties;
- (b) Petitioner has no legal existence as Petitioner has no contractual relationship with Respondent;
- (c) Petitioner has failed to satisfy the statutory requirements of Idaho Code Section 33-1271, as amended.

## **TWELFTH AFFIRMATIVE DEFENSE**

### **No Contract Between Respondent and Individual Teachers**

Respondent requested voluntary furlough days from certified staff, and furlough days were voluntarily contributed by over one-half of the certified staff.

**REQUEST FOR ATTORNEY FEES**

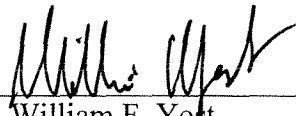
Respondent hereby requests that it be awarded its attorney fees and costs incurred herein pursuant to Idaho Code Sections 12-117 and 12-121 and Rule 54(e)(1), IRCP.

**PRAYER FOR RELIEF**

Having answered, Respondent prays that Petitioner take nothing by its Petition herein, that the same be dismissed and that Respondent be awarded its attorney fees and costs.

DATED this 18<sup>th</sup> day of April, 2013.

YOST LAW, PLLC

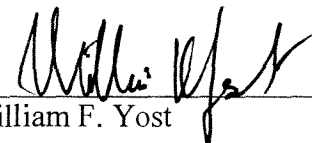
By:   
William F. Yost  
Attorney for Respondent

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> day of April, 2013, I caused to be served by the method indicated below a true and correct copy of the foregoing document upon:

Paul J. Stark  
Idaho Education Association  
620 North 6<sup>th</sup> St  
PO Box 2638  
Boise, ID 83701

☐ U.S. Mail  
☐ Overnight Mail  
☐ Hand Delivery  
☒ Facsimile No. 344-1606

  
William F. Yost

William F. Yost, ISB No. 1242  
Yost Law, PLLC  
4 Ogden Avenue  
PO Box 1275  
Nampa, Idaho 83653  
Telephone: 208-466-9222  
Facsimile: 208-466-1981

Attorney for Respondent

**F I L E D**  
1010 A.M. P.M.

**JUN 05 2013**

**CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY**

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

NAMPA EDUCATION ASSOCIATION,

Petitioner,

vs.

NAMPA SCHOOL DISTRICT NO. 131,

Respondent.

Case No. CV 2013-2962-C

**RESPONDENT'S MOTION FOR  
SUMMARY JUDGMENT**

**(I.R.C.P. 56)**

COMES NOW the Respondent, NAMPA SCHOOL DISTRICT NO. 131, by and through its counsel of record, William F. Yost and Chip Giles, of Yost Law, PLLC, and moves this Court, pursuant to Rule 56 of the Idaho Rules of Civil Procedure, for a complete summary judgment in Respondent's favor.


This motion is based upon the documents and pleadings on file in this matter, together with the Affidavit of Steven Kipp in Support of Plaintiffs' Motion for Summary Judgment, and the Memorandum in Support of Motion for Summary Judgment, all filed contemporaneously herewith.

RESPONDENT'S MOTION FOR SUMMARY JUDGMENT - 1

000014

Respectfully submitted this 5<sup>th</sup> day of June, 2013.

YOST LAW, PLLC


By:   
Chip Giles  
Attorney for Respondent

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5<sup>th</sup> day of June, 2013, I caused to be served by the method indicated below a true and correct copy of the foregoing document upon:

Paul J. Stark  
Idaho Education Association  
620 North 6<sup>th</sup> St  
PO Box 2638  
Boise, ID 83701

☐ U.S. Mail  
☐ Overnight Mail  
☐ Hand Delivery  
☒ Facsimile No. 344-1606

  
Chip Giles

FILED  
1010 A.M. P.M.

JUN 05 2013

independently determined by the board and not controlled by the terms which failed ratification, for professional employees as provided in section 33-1274, Idaho Code. Provided however, that such compensation shall reflect the last best good faith offer proposed by the board during negotiations.

2. Section 33-1274A remained in effect until November 21, 2012, when Governor Otter issued a proclamation formally repealing the Students Come First legislation pursuant to the November 8, 2012 referendum votes on Propositions One, Two and Three.

3. The pre-referendum version of Idaho Code Section 33-1274 was in effect in the Spring and Summer of 2012, when the District began master contract negotiations with the Nampa teachers' union, the Nampa Education Association ("NEA"), to negotiate compensation and economic benefits for teachers.

4. An agreement regarding compensation and economic benefits was never reached, and a master contract between the District and the Union was never formalized. Under the then-existing version of Idaho Code 33-1274, the District's last best offer was imposed.

5. Teachers were required to sign individual standard contracts with the District establishing the District's last best offer as the teacher compensation and economic benefits for the 2012-2013 school year.

6. In the Fall of 2012, a financial audit revealed a \$4.3 million deficit in the District budget.

7. Due to the budget deficit, the District was forced to make drastic cost cutting measures including the closure of one school. The District Board of Trustees and administrators began exploring additional options to keep the District solvent.

8. In order to make payroll and keep facilities open, the District refinanced certain school bonds, ran a supplemental school levy which was approved by voters, obtained judicial



approval to enable borrowing, contracted with private vendors to provide school maintenance, and approached teachers with the option of volunteering for up to four furlough days.

9. In early December 2012, the District presented teachers with a voluntary agreement in the form attached hereto as Exhibit "A" and by this reference incorporated herein ("Addendum Contract").

10. The Addendum Contract provided teachers the voluntary option of taking furlough days to assist the District in managing cash flow and meeting financial obligations. The Addendum Contract defined all furlough days as voluntary.

11. Teachers were presented the option of taking any or all of four (4) voluntary furlough days on the following dates: January 4, 2013; March 8, 2013; March 22, 2013; and May 31, 2013. The proposed dates were teacher work days, or other non-student days, and therefore had no impact on student-teacher contact days.

12. Teachers were allowed to choose any or all proposed furlough days by circling the dates they desired on the Addendum Contract.

13. In early December 2012, District administration conducted meetings with teachers regarding the District's financial issues and to present teachers with the voluntary Addendum Contract.

14. As a result of the meetings with teachers and administration, 545 staff members (501 certified teachers and 44 administrative staff) volunteered one or more furlough days. After the meetings, 24 certified teachers later modified their agreements adding to, or reducing, the number of volunteered furlough days.

15. On December 14, 2012, and again on December 18, 2012, General Counsel for the NEA wrote to Superintendent Thomas Michaelson, claiming the voluntary Addendum Contracts were illegal and unenforceable.

16. On December 18, 2012 Counsel for the District sent a letter to the NEA regarding the Addendum Contracts. It was explained that if immediate measures were not taken to address the District's financial issues, the District would be faced with the inability to pay personnel, vendors, and other contract services, perhaps as early as April 2013. In conclusion the letter requested leadership, guidance and cooperation from the NEA to address the District's budget deficit.

17. On March 25, 2013 the NEA filed a Petition for Declaratory Judgment in the Third Judicial District, Canyon County, Idaho.

18. The NEA alleges that its members were coerced into signing the Addendum Contract and that the Addendum Contract violated Idaho Code Section 33-513(1), because it was not a written contract approved by the State Superintendent of Public Instruction.

19. The NEA requested a declaratory judgment pursuant to Idaho Code § 10-1201, *et seq.*, declaring the Addendum Contracts to be unlawful and unenforceable.

20. The District now moves for summary judgment on all issues raised in the Petition.

#### **STANDARD OF REVIEW**

The Idaho Rules of Civil Procedure provide that summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c).

In order to defeat a Motion for Summary Judgment, a party must prove a specific and sufficient issue as to a material fact. The Idaho Supreme Court has ruled: "A mere scintilla of evidence or only slight doubt as to the facts" is not sufficient to create a genuine issue for purposes of summary judgment. *Harpole v. State*, 131 Idaho 437, 439, 958 P.2d 594, 596 (1998). The non-moving party "must respond to the summary judgment motion with specific facts showing there is a genuine issue for trial." *Tuttle v. Sudenga Indus., Inc.*, 125 Idaho 145, 150,

868 P.2d 473, 478 (1994). "The non-moving party must submit more than just conclusory assertions that an issue of material fact exists to establish a genuine issue." *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 401, 987 P.2d 313, 304 (1999). "Summary judgment is appropriate where the non-moving party bearing the burden of proof fails to make a showing sufficient to establish the existence of an element the center for that party's case." *Carnell v. Barker Management Incorporated*, 137 Idaho 322, 327, 48 P.3d 651, 656 (2002). Thus, absent a non-moving party's presentation of facts sufficient to prove a genuine trial issue, the moving party is entitled to judgment as a matter of law.

"On Motion for Summary Judgment, the moving party bears the initial burden of proving the absence of material fact issues." *Sherer v. Pocatello School Dist. No. 25*, 143 Idaho 486, 489, 148 P.3d 1232, 1235 (2006). "Only then does the burden shift to the non-moving party to come forward with sufficient evidence to create a genuine issue of material fact." *Id.* at 489-90, 148 P.3d at 1235-36. Additionally: "disputed facts are construed in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party." *Lockheed Martin Corp. v. Idaho State Tax Comm'n*, 142 Idaho 790, 793, 134 P.3d 641, 644 (2006). Therefore, the initial burden is on the party seeking summary judgment, and ultimately disputed facts will be construed in favor of the non-moving party.

Finally, the Idaho Rules of Civil Procedure provide that when presenting affidavits, they "shall be made on personal knowledge, shall set forth facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." I.R.C.P. 56(e).

### ARGUMENT

#### **A. RESPONDENT IS ENTITLED TO SUMMARY JUDGMENT SINCE PETITIONER LACKS STANDING.**

Idaho Courts have ruled that "justiciability is generally divided into subcategories --

advisory opinions, feigned and collusive cases, standing, ripeness, mootness, political questions, and administrative questions.” *Miles v. Idaho Power*, 116 Idaho 635, 639 778 P.2d 757, 761 (Idaho 1989). Regarding standing, Idaho Courts have held “it is a fundamental tenet of American jurisprudence that a person wishing to invoke a court's jurisdiction must have standing.” *Van Valkenburgh v. Citizens for Term Limits*, 135 Idaho 121, 124, 15 P.3d 1129, 1132 (2000). Based on the facts of this case, it is the District's position that the NEA lacks standing to bring a petition for Declaratory Judgment.

In 1989, the Idaho Supreme Court applied the following three-factor analysis to determine standing in *Miles v. Idaho Power Co.*:

(1) Standing “focuses on the party seeking relief and not on the issues the party wishes to have adjudicated;” (2) That in order “to satisfy the case or controversy requirement of standing, litigants generally must allege or demonstrate an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury;” and (3) That “a citizen and taxpayer may not challenge the governmental enactment or the injury as one separate alleged by all citizens and taxpayers of the jurisdiction.”

*Miles v. Idaho Power Co.*, 116 Idaho 635, 641, 778 P.2d 757, 763 (1989) (citing *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982)); see also *Boundary Backpackers v. Boundary County*, 128 Idaho 371, 375, 913 P.2d 1141, 1145 (1996).

Thus, to satisfy the case or controversy requirement of standing, litigants generally must allege or demonstrate an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury. *Miles* at 116 Idaho at 641. In *Miles*, the Court also found that standing requires a showing of a “distinct palpable injury” and a “fairly traceable causal connection between the claimed injury and the challenged conduct.” *Id* at 639. Palpable is defined as follows: “1. Tangible; capable of being touched or felt; 2. Noticeable; easily perceptible; and 3. Manifest; easily perceptible by the mind.” “Palpable.” *Merriam-Webster.com*

Merriam-Webster, 2011. Web. 22 May 2013.

The NEA seeks a judgment declaring the Addendum Contracts to be unlawful and unenforceable. In order to invoke this Court's jurisdiction, the NEA must prove standing, and at a minimum satisfy the first two applicable prongs of the three part *Miles* test. First, the NEA has not alleged an injury in fact. The NEA cannot prove that the voluntary signing of an agreement resulted in injury to any NEA member. Therefore, the NEA does not meet the first prong of the *Miles* test.

Second, assuming existence of an injury, there is no likelihood the relief requested by the District would prevent or redress the claimed injury. The District presented teachers with the Addendum Contracts as a one-time measure to address an immediate and substantial budget concern. A judgment granting the NEA's request for relief would declare a previously executed and fully performed contract is (or was), unlawful and unenforceable. This does nothing to prevent or redress any injury, actual or alleged. Thus, the NEA fails under the second prong of the *Miles* test.

The process surrounding the Addendum Contracts was completely voluntary. It is impossible that a distinct and palpable injury could stem from a voluntary act. Since the NEA cannot articulate a distinct and palpable injury, there is no traceable causal connection to the alleged conduct. Thus, in addition to failing the *Miles* test, the NEA fails to prove standing under the distinct, palpable and directly traceable analysis set forth by Idaho Courts.

A recent discussion of the standing doctrine occurred in the case, *In re: Jerome Board of Commissioners*. The Court applied an associational standing analysis in addition to the *Miles* test. Citing the decision in *Selkirk-Priest Basin Ass'n, Inc. v. State ex rel. Andrus*, the Court found, "as applied to associations seeking standing for its members, this Court considers whether the association has alleged that at least one of its members face injury and could meet the requirements of standing on an individual basis." *In re Jerome County Bd. of Com'rs*, 153 Idaho 298, 281 P.3d 1076, 1082 (2012).

*In re: Jerome County* concerned the approval of a permit for a Concentrated Animal Feeding Operation ("CAFO") by the Jerome County Board of County Commissioners ("Board"). Several individuals and organizations were opposed to the CAFO because of potential harms to neighboring farms and the Minidoka Historic Site. Several of these groups petitioned the District Court for review of the Board's decision. The District Court affirmed the Board's approval of the permit, ruling that four of the organizations concerned with the effects of the CAFO on the Minidoka National Historic Site lacked standing. Several of the objecting parties appealed the District Court decision, and asked the Idaho Supreme Court to find that the parties had standing to challenge the permit approval.

On appeal, the Supreme Court found that every group but one had standing to appeal the Board's decision. The Court ruled that groups with members whose primary residences were within one mile of the proposed site, or adjacent to the proposed site could be severely affected, and face potential harm, if the proposed site were developed. *Id* at 1082. Since the proposed site would create a redressable injury for at least one member of each group, the court reasoned that these groups met the requirements to establish associational standing.

The Court, however, denied standing to a group that "could not provide a specific allegation that any identified member of the group live in proximity to the proposed CAFO site, or would be harmed by its presence," and "at best voiced concerns on behalf of unidentified members of their organizations, none of whom individually would have standing to participate in an appeal." *Id* at 1088.

It is unlikely any NEA member can show they have, or would be harmed by, the existence or the signing of a voluntary furlough agreement. Furthermore, the NEA cannot claim associational standing since no one member faces injury, or could meet the requirements of standing on an individual basis. The NEA's failure to satisfy the *Miles* test, or the Idaho requirements for

associational standing is fatal to its request for declaratory relief. Therefore, due to lack of standing, summary judgment should be awarded in favor of the District.

**B. RESPONDENT IS ENTITLED TO SUMMARY JUDGMENT SINCE THE ISSUES ALLEGED BY THE PETITIONER ARE NOW MOOT.**

Idaho Courts have found an issue is moot if it "presents no justiciable controversy and a judicial determination will have no practical effect upon the outcome." *Idaho County Property Owners Ass'n., Inc. v. Syringa General Hosp. Dist.*, 119 Idaho 309, 315, 805 P.2d 1233, 1239 (1991). The District's opinion in this case is no justiciable controversy exists, and any argument raised in relation to the voluntary Addendum Contract is moot. Therefore, any judicial determination would have no practical effect upon the outcome.

*Idaho County Property Owners Ass'n.* involved a request by the Idaho County Property Owner's Association for an injunction preventing the Syringa General Hospital District from expending taxes levied by the District. The Idaho Supreme Court ruled that at the time summary judgment was heard on the issue, there remained a substantial amount of money in the capital improvement fund, and the injunction requested would have been effective in preventing the harm of which the plaintiffs complained. *Id* at 315. Due to the existence of money in the capital improvement fund, and the fact that an injunction would prevent harm to the plaintiffs, the Court found a justiciable controversy and ruled that the mootness doctrine did not apply.

Idaho Courts have also ruled that an issue will become moot "if it does not present a real and substantial controversy that is capable of being concluded" by judicial relief. *Koch v. Canyon County*, 145 Idaho 158, 163, 177 P.3d 372, 377 (2008). In *Koch*, the Supreme Court considered whether a group of Canyon County taxpayers had standing to litigate the constitutionality of a lease agreement entered into by the County and whether the issue was moot once the County purchased and later sold the real property previously subject to the lease agreement. The Court held that since the pre-existing lease agreement was no longer in effect,

and on remand to the District Court for further proceedings, the Court could not grant the plaintiffs any specific relief regarding the lease agreement. The Supreme Court dismissed the appeal as moot, since no exception to the mootness doctrine applied. *Id.*

By the time this motion is argued, performance of the voluntary Addendum Contracts between teachers and the District will be complete, and no live controversy will exist. Judicial action declaring the Addendum Contracts unlawful and unenforceable will do nothing to prevent any harm complained of by the NEA. Furthermore, the NEA has failed to establish the existence of "a real and substantial controversy, which is capable of being concluded." As a result, any issue raised by the NEA in relation to the voluntary Addendum Contracts is now moot.

In light of the above analysis, Idaho courts have provided the following exceptions to the mootness doctrine: "(1) When there is the possibility of collateral legal consequences imposed on the person raising the issue; (2) when the challenged conduct is likely to evade judicial review and thus is capable of repetition; and (3) when an otherwise moot issue raises concerns of substantial public interest." *Ameritel Inns, Inc. v. Greater Boise Auditorium Dist.*, 141 Idaho 849, 851-52, 119 P.3d 624, 626-27 (2005).

Idaho courts have routinely applied factor one in the criminal context. Generally, "collateral legal consequences" have been found to include civil disabilities associated with criminal convictions, such as being "barred from holding certain offices, voting in state elections, and serving as a juror." *State v. Shepperd*, 38286 Court of Appeals of Idaho September 15, 2011, citing *United States v. Mercurris*, 192 F.3d 290, 293 (2d Cir. 1999).

The Supreme Court additionally held "potential relitigation of an undecided issue is not the type of collateral consequence contemplated under this exception. In effect, the State is asking this Court to issue an advisory opinion in order to avoid the issue in future cases; an



exercise this Court will not undertake.” *State v. Barclay*, 232 P.3d 327, 149 Idaho 6 (Idaho 2010).

If Declaratory relief is not granted in this case there will be no future collateral legal consequences, such as precluding eligibility to hold state office, voting rights, or eligibility to serve as a juror. Furthermore, a court is not compelled to hear further argument related to a voluntary Addendum Contract, already executed and performed, because to do so would ask the court to issue an advisory opinion. Therefore, absent potential collateral legal consequences any argument raised in relation to the voluntary Addendum Contracts does not invoke factor one of the mootness analysis. Furthermore, declaratory relief in this case would force the Court to issue an advisory opinion.

Idaho courts have applied the second exception to the mootness doctrine to criminal appeals upon completion of a penitentiary sentence. The exception applies to these cases since ordinarily any issue raised in relation to a prison sentence would be considered moot once the sentence was served. However, to dismiss such an action as moot would allow a sentencing issue to evade judicial review, and become capable of repetition. See *Russell v. Fortney*, 722 P.2d 490, 111 Idaho 181 (Idaho App. 1986), *Mallery v. Lewis*, 678 P.2d 19, 106 Idaho 227 (Idaho 1983).

Additionally, Idaho courts have applied the second exception in the domestic law context, analyzing a father’s right to designate visitation with his child to another family member, while serving in the military overseas. Even though the father had returned from service, and would have no need to designate his visitation rights, the court found the issue to fall within the mootness exception because the father was still eligible for re-deployment as an enlisted member of the National Guard, and since other enlisted persons could face the same issue regarding designation of visitation. As a result, the issue regarding designation of visitation rights could

evade judicial review, and become capable of repetition. See *Webb v. Webb*, 148 P.3d 1267, 143 Idaho 521, 524 (Idaho 2006).

The Idaho Supreme Court applied the third “public interest” mootness exception when the substantive issue presented was whether public entities could use public funds to campaign in an election. The Court applied the exception declaring a public entity’s use of public funds for election campaigns “an issue of substantial public interest that this Court has not yet addressed.” The Court employed the exception and heard argument on the issue to “provide guidance and direction in the future.” *Ameritel Inns, Inc. v. Greater Boise Auditorium Dist.*, 119 P.3d 624, 141 Idaho 849, 852 (Idaho 2005).

Conversely, in *Koch* (previously cited), the Idaho Supreme Court refused to apply the public interest exception when the issue presented to the Court was whether a property lease agreement between Canyon County and a private entity violated the provisions of Article VIII, § 3, of the Idaho Constitution. The Court held that since “the district court has not yet ruled on whether the particular lease agreement in this case violates Article VIII, § 3, remanding the case for the district court to make that determination when it would not resolve any dispute between the parties and would simply be asking the court to make an advisory opinion.” *Koch* 145 Idaho 158, 160.

The Addendum Contracts at issue in the NEA’s complaint differ from appeal of a criminal sentence already served, and the designation of visitation rights for overseas service members since the Addendum Contracts were voluntary and will be completely performed by the time this Motion is argued. Thus, the second mootness exception does not apply.

Additionally, the signing of an agreement to volunteer a furlough day does not trigger a high degree of public interest, such as the use of public funds for an election campaign. Much like the lease issue presented in *Koch*, an adjudication declaring the Addendum Contracts

unlawful and unenforceable would not resolve any dispute between the parties, and would request an advisory opinion from the Court. Thus, the public interest exception to the mootness doctrine does not apply.

Based on the above, any issue raised by Petitioner in relation to the voluntary Addendum Contract is now moot, and does not fall under any exception to the mootness doctrine. Therefore, summary judgment should be entered in favor of the District.

**C. RESPONDENT IS ENTITLED TO SUMMARY JUDGMENT SINCE THE ISSUES ALLEGED BY PETITIONER ARE NOT RIPE FOR REVIEW.**

Legal claims must be ripe for review in order for justiciability to exist. The ripeness test in Idaho "asks whether court action is necessary at the present time." *Boundary Backpackers*, 128 Idaho 371, 376. Under the three-part ripeness analysis established by Idaho courts, a party must show the following: (1) The case presents definite and concrete issues; (2) a real and substantial controversy exists (as opposed to hypothetical facts); and (3) there is a present need for adjudication. *Noh v. Cenarussa*, 137 Idaho 798, 801, 53 P.3d 1217, 1220 (2002).

Idaho courts have applied the ripeness test to determine justiciability in a variety of cases. In *Boundary County*, the Supreme Court analyzed the constitutionality of an ordinance requiring Boundary County to enforce compliance with a plan proclaiming that no wilderness areas shall be designated in Boundary County. The Court found the matter ripe for review since:

The ordinance is in place. It contains several edicts concerning the compliance of federal and state agencies with the plan and announces that "[n]o wilderness areas shall be designated in Boundary County." The ordinance proclaims: "Boundary County shall enforce compliance with [the plan]...." The affidavit of the board members who enacted the ordinance stating that they "deemed that it would not be proper to seek enforcement of the ordinance by fines or penalties" does not override the terms of the ordinance requiring enforcement. We will not speculate whether the board members will choose another form of enforcement or whether a new board will choose to enforce the ordinance by fines or penalties. The ordinance requires the plan to be enforced. *Boundary Backpackers*, 128 Idaho 371, 376.

In *Boundary*, the Court found the matter ripe for review since the issue regarding the present ordinance was definite and concrete, a substantial controversy regarding enforcement existed, and there was a present need for adjudication. *Id.*

In *State v. Manley*, the Idaho Supreme Court found an issue regarding the double jeopardy clause ripe for review. The case involved Manley's request for review of a District Court's declaration of a mistrial, and denial of Manley's Motion to Dismiss with prejudice on the grounds that any re-trial would be barred by double jeopardy. The State requested dismissal without prejudice, moving to dismiss the charge against Manley, but preserve the right to re-charge at a later date. The District Court granted the State's Motion.

The Court of Appeals upheld the District Court decision, and on appeal to the Supreme Court, the State argued that since Manley was no longer being charged, the double jeopardy issue was not ripe for review. The Supreme Court found, "it is clear that this issue will be before us either now or in the future, and a declaration now of the various rights of the parties will certainly afford a relief from uncertainty and controversy in the future." *State v. Manley*, 142 Idaho 338, 342, 127 P.3d 954 (Idaho 2005).

In reaching its decision, the Court found that potential further prosecution of Manley was a concrete issue, and created a real and substantial controversy. The Court also found a present need for adjudication because Manley's double jeopardy rights had been violated. *Id.* Because Manley satisfied the three-part ripeness test, the Court found the issue ripe for review.

Unlike the issue presented in *Boundary Backpackers*, where the constitutionality of an effective ordinance was in question, the adjudication of a fully executed and performed voluntary agreement does not present a definite and concrete issue. In fact, arguments raised by the NEA fail to produce any issue at all, since the voluntary Addendum Contracts were a one-time measure, employed to address immediate and substantial financial concerns. Moreover, since the

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 14

voluntary Addendum Contracts have been fully executed and performed, no definite and concrete issue exists.

For the reasons mentioned above, the NEA cannot show a real and substantial controversy as required by factor two. There is no controversy with regard to the voluntary Addendum Contracts since by the time this Motion is heard, the voluntary Addendum Contracts will have been fully performed. In seeking a declaratory judgment, the NEA's Petition only presents hypothetical facts, and will ask the Court to make an advisory opinion as to future adjudication of an executed voluntary agreement.

Factor two distinctly requires a real and substantial controversy to exist (as opposed to hypothetical facts). The NEA's request for a declaratory judgment in relation to a fully performed voluntary Addendum Contract compels the Court to consider purely hypothetical facts. As a result, the NEA fails to meet factor two of the ripeness analysis.

Because the NEA fails to meet the first two prongs of the three-part ripeness test, and particularly since the voluntary Addendum Contracts have been executed and fully performed, the Court is not compelled to adjudicate the issue. In contrast to *Manley*, where a Constitutional right was at issue, and demanded present adjudication, the issue invoked in the NEA's Petition was the execution of a voluntary agreement. This does not give rise to the violation of a constitutional right. Thus, the NEA fails to meet the third factor of the ripeness analysis since there is no compelling need for present adjudication.

As a result, court action is not necessary at the present time. Any issue raised by Petitioner in relation to the voluntary Addendum Contracts fails to meet the requirements for ripeness. Therefore, summary judgment should enter in favor of the District.

**D. SINCE THE ISSUE IS NOT JUSTICIABLE AND NO ACTUAL CONTROVERSY EXISTS, DECLARATORY JUDGMENT IS IMPROPER.**

The authority for Idaho courts to render declaratory judgment is provided by statute. The

Declaratory Judgment Act, contained in Idaho Code Title 10, Chapter 12, provides jurisdiction to the court to, "declare rights, status, and other legal relations, whether or not further relief is or could be claimed." I.C. § 10-1201.

However, absent justiciability, Idaho courts may not grant declaratory relief. An early Idaho case provided, "a central foundation of the Idaho Declaratory Judgment Act is the requirement of adverse parties, and there must be a justiciable issue presented." *Whitney v. Randall*, 58 Idaho 49, 59, 70 P.2d 384 (1937).

More recently, the Idaho Supreme Court recognized the limitations on jurisdiction to provide declaratory relief, ruling that "a declaratory judgment can only be rendered in a case where an actual or justiciable controversy exists." *Harris v. Cassia County*, 106 Idaho 513, 516, 681 P.2d 988, 991 (1984).

In *Harris*, the appellants were recipients of county indigency benefits. The Court found justiciability to exist since appellants did not pose a hypothetical question, and the controversy related to appellants' claim of right to receive county indigency benefits, even if the fund is depleted, was definite, concrete and touching the legal relations of the parties. The Court further found the parties to have adverse legal interests, and existence of a real and substantial controversy since a claim of right to receive indigency benefits was at issue. Accordingly, the Court found the dismissal of the District Court's action for declaratory relief improper and remanded for further consideration. *Id.*

The Idaho Supreme Court followed established Idaho precedent in *Selkirk-Priest Basin Assoc., Inc. v. State ex rel. Batt*, and ruled, "the Declaratory Judgment Act does not relieve a party from showing that it has standing to bring the action in the first instance." *Selkirk-Priest Basin Assoc., Inc. v. State ex rel. Batt*, 128 Idaho 831, 834, 919 P.2d 1032, 1035 (1996). In *Selkirk*, the Court found that the Selkirk-Priest Basin Association's ("SPBA") right to challenge

timber sales was directly impacted by existing statutes. However, since the SPBA failed to prove standing to challenge the timber sale in the first instance, the Court refused to grant the SPBA's request for declaratory judgment. *See Selkirk-Priest Basin*, 128 Idaho 831 (1996).

Thus, it is well-established that Idaho Courts do not render declaratory judgment if the requirements of justiciability are not met. The NEA has failed to present a justiciable issue to the Court. Unlike *Harris*, where the Court found a real and substantial controversy, involving indigent citizen's future claims to the County indigent fund, the NEA seeks declaratory relief in relation to a fully performed voluntary Addendum Contract. Therefore, unlike *Harris*, the NEA's Petition does not present a real or substantial controversy to the Court.

The NEA's Petition compels the Court to consider the Idaho Supreme Court's holding in *Selkirk*, where absent standing, the Court ruled declaratory relief was improper. The NEA has failed to meet the standing requirements to request relief from the Court, just like the petitioners in *Selkirk*. As a result, the Court should not grant injunctive relief.

The NEA's failure to prove justiciability, leaves the Court with no basis to grant Declaratory Judgment. Therefore, summary judgment should be entered in favor of the District.

#### **CONCLUSION AND REQUEST FOR ATTORNEY FEES**

Respondent respectfully requests that this Court grant the Motion for Summary Judgment based on the foregoing. Additionally, Respondent hereby requests that it be awarded its attorney fees and costs incurred herein pursuant to Idaho Code Sections 12-117 and 12-121 and Rule 54(e)(1), IRCP.

DATED this 5<sup>th</sup> day of June, 2013.

YOST LAW, PLLC

By: 


Chip Giles  
Attorney for Respondent

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5<sup>th</sup> day of June, 2013, I caused to be served by the method indicated below a true and correct copy of the foregoing document upon:

Paul J. Stark  
Idaho Education Association  
620 North 6<sup>th</sup> St  
PO Box 2638  
Boise, ID 83701

☐ U.S. Mail  
☐ Overnight Mail  
☐ Hand Delivery  
☒ Facsimile No. 344-1606

  
Chip Giles



**ADDENDUM TO  
CONTINUING TEACHER CONTRACT**

THIS ADDENDUM TO CONTINUING TEACHER CONTRACT ("Addendum") is made this 13 day of Dec., 2012, by and between NAMPA SCHOOL DISTRICT NO. 131, Canyon County, Idaho, State of Idaho (hereinafter called "District") and [REDACTED] (hereinafter called "Teacher"), collectively referred to as the "parties."

**RECITALS**

- A. District and Teacher entered into a State of Idaho Continuing Teacher Contract dated the        day of Sept., 2012, for the school year 2012-2013.
- B. District is experiencing significant budgeting problems and will not be able to fully fund the cash flow requirements for the balance of the 2012-2013 school year.
- C. Teacher desires to participate in a voluntary program to aid District in managing its necessary cash flow requirements and enable District to meet its required and necessary obligations.
- D. Now, therefore, the parties covenant and agree as follows.

**ADDENDUM**

- 1. **INCORPORATION OF RECITALS:** The above recitals are contractual and binding and are incorporated herein as if set forth in full.
- 2. **FURLOUGH DAYS:** Teacher agrees to contribute one (1) to four (4) furlough days to District from the following eligible dates (the selected furlough days shall be circled):

- January 4, 2013
- March 8, 2013
- March 22, 2013
- May 31, 2013

A furlough day is defined as a voluntary act by Teacher in accepting certain days where Teacher will not perform his or her customary duties and will receive no compensation for those days. At the complete discretion of Teacher, he/she may provide services as required under the Continuing Teacher Contract referred to above in Recital A, but as a volunteer only.

- 3. **BENEFITS:** No reduction will be made to any benefits available or accruing for and on behalf of Teacher.

ADDENDUM TO CONTINUING TEACHER CONTRACT - 1

**EXHIBIT "A"**

4. TERM: This Addendum shall apply only to the remainder of the 2012-2013 school year, and this Addendum shall terminate upon the termination date of the Continuing Teacher Contract referred to above in Recital A.

5. NO OTHER AMENDMENTS: It is agreed by and between the parties that nothing herein contained shall operate or be construed as a waiver of any of the rights, powers, privileges, or duties of either party hereto, by and under the laws of the State of Idaho, and as provided in that Continuing Teacher Contract referred to in Recital A, otherwise than is expressly stated in this Addendum.

IN WITNESS WHEREOF, District has caused this Addendum to be executed in its name by its proper officials, and Teacher has executed the same all on the date first above written.


NAMPA SCHOOL DISTRICT NO. 131  
Canyon County, Idaho


By: \_\_\_\_\_

Chairman, Board of Trustees

ATTEST:

\_\_\_\_\_  
Clerk, Board of Trustees

  
Signature of Teacher

Print Name: 

William F. Yost, ISB No. 1242  
Chip Giles, No. 9135  
Yost Law, PLLC  
4 Ogden Avenue  
PO Box 1275  
Nampa, Idaho 83653  
Telephone: 208-466-9222  
Facsimile: 208-466-1981

Attorneys for Respondent

FILED  
1010 A.M. P.M.

JUN 05 2013

CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

NAMPA EDUCATION ASSOCIATION,

Petitioner,

vs.

NAMPA SCHOOL DISTRICT NO. 131,

Respondent.

Case No. CV 2013-2962-C

**AFFIDAVIT OF STEVE KIPP IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

STATE OF IDAHO )

: ss.

County of Canyon )

STEVE KIPP, being first duly sworn, on oath, deposes and says:

1. I was the Human Resource Officer of Nampa School District No. 131 ("District")  
at all times material to the Motion for Summary Judgment filed herewith.

2. As the Human Resource Officer of the District, I was informed regarding the  
voluntary furlough day agreements between the teachers and the District.

AFFIDAVIT OF STEVE KIPP IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 1

000036

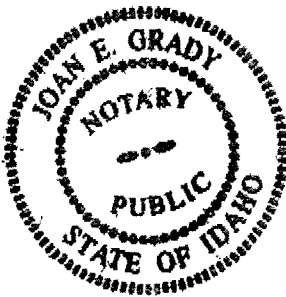
3. I coordinated the presentation process of the agreements from administration to teachers and personnel.

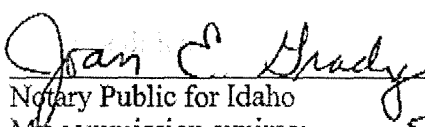
4. At the conclusion of meetings between the District administration, teachers and staff, approximately 545 staff members (approximately 501 certified teachers and approximately 44 administrative staff) volunteered one or more furlough days. After the agreements were executed, approximately 24 certified teachers later modified their agreements, either adding to or reducing the number of volunteer furlough days.

Further the affiant sayeth naught.

  
STEVE KIPP

Subscribed and sworn to before me this 20<sup>th</sup> day of May, 2013.



  
Notary Public for Idaho  
My commission expires: 5-15-2018

00000001 1 000 F0020/0028 F-051

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5<sup>th</sup> day of June, 2013, I caused to be served by the method indicated below a true and correct copy of the foregoing document upon:

Paul J. Stark  
Idaho Education Association  
620 North 6<sup>th</sup> St  
PO Box 2638  
Boise, ID 83701

☐ U.S. Mail  
☐ Overnight Mail  
☐ Hand Delivery  
☒ Facsimile No. 344-1606

  
\_\_\_\_\_  
Chip Giles

Paul J. Stark, Esq. - ISB# 5919  
IDAHO EDUCATION ASSOCIATION  
620 North Sixth Street  
P.O. Box 2638  
Boise, Idaho 83701  
Telephone: (208) 333-8560  
Facsimile: (208) 344-1606

FILED  
1140 A.M. P.M.

JUL 05 2013

CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY

*Attorney for Petitioner*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

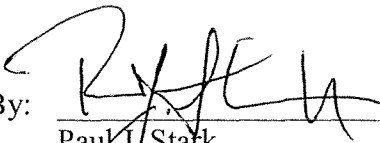
NAMPA EDUCATION ASSOCIATION,	)	
	)	Case No.: CV13-2962-C
Petitioner,	)	
	)	PETITIONER'S MOTION FOR
vs.	)	SUMMARY JUDGMENT
	)	
NAMPA SCHOOL DISTRICT NO. 131,	)	
	)	
Respondent.	)	
	)	

Petitioner Nampa Education Association, by and through its attorney of record, Paul J. Stark, Esq., General Counsel, Idaho Education Association, hereby moves for an Order from this Court granting summary judgment on its entire Petition for Declaratory Judgment on the grounds that the "Addendum Contracts" violated Idaho Code §33-513(1) because the "Addendum Contracts" were not a written contract approved by the state superintendent of public instruction, and therefore were illegal as a matter of law.

Petitioner's Motion is supported by the Affidavit of Mandy Simpson in Support of Petitioner's Motion for Summary Judgment, with exhibits attached and Petitioner's Memorandum in Support of Motion for Summary Judgment.

DATED this 5<sup>th</sup> day of July, 2013.

IDAHO EDUCATION ASSOCIATION

By:   
Paul J. Stark  
Attorney for Plaintiff Nampa Education Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5<sup>th</sup> day of July, 2013, I caused a true and correct copy of the foregoing PETITIONER'S MOTION FOR SUMMARY JUDGMENT to be served via:

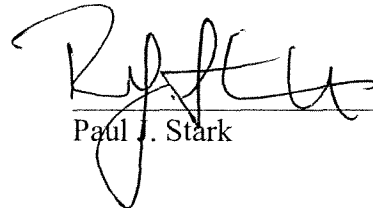
\_\_\_\_\_ U.S. Mail

\_\_\_\_\_ Facsimile Transmission

X \_\_\_\_\_ Hand Delivered

to:

William F. "Bud" Yost  
Yost Law, PLLC  
4 Ogden Avenue  
P.O. Box 1275  
Nampa, Idaho 83653  
Facsimile: (208) 466-1981

  
\_\_\_\_\_  
Paul J. Stark



Paul J. Stark, Esq.- ISB #5919  
IDAHO EDUCATION ASSOCIATION  
620 North Sixth Street  
P.O. Box 2638  
Boise, Idaho 83701  
Telephone: (208) 333-8560  
Facsimile: (208) 344-1606

FILED  
1140 A.M. P.M.  
JUL 05 2013  
CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY

*Attorney for Petitioner*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

NAMPA EDUCATION ASSOCIATION,	)	
	)	Case No.: CV13-2962-C
Petitioner,	)	
	)	PETITIONER'S MEMORANDUM
vs.	)	IN SUPPORT OF PETITIONER'S
	)	MOTION FOR SUMMARY
NAMPA SCHOOL DISTRICT NO. 131,	)	JUDGMENT
	)	
Respondent.	)	
	)	

### **I. INTRODUCTION**

Respondent Nampa School District No. 131 ("School District") issued Nampa School District teachers ("Teachers") illegal addendum contracts in violation of Idaho Code §33-513(1). Due to the fact that the addendum contracts modified the terms and conditions of employment (as contained in the Standard Teacher Contract) and were not a written contract approved by the state superintendent of public instruction, such addendums were illegal as a matter of statutory and regulatory law.

Petitioner Nampa Education Association ("Petitioner") is the duly selected and recognized representative for the teachers in the School District. As discussed below, Petitioner

PETITIONER'S MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION FOR  
SUMMARY JUDGMENT - 1

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is entitled to summary judgment against the School District because, as a matter of law, the addendum contracts are unlawful and unenforceable. Further, Petitioner is entitled an award of attorney's fees and costs, and for such other and further relief as the Court deems just and equitable.

## **II. STATEMENT OF FACTS**

In the summer of 2012, the Teachers signed a Standard Teacher Contract on a form approved by the state superintendent of public instruction for the 2012-2013 school year. Affidavit of Mandy Simpson ("Simpson Aff.") ¶ 5. The Standard Teacher Contract established the terms and conditions of the Teachers' employment for the 2012-2013 school year.

The Standard Teacher Contract form approved by the state superintendent of public instruction, and signed by the Teachers, provided:

It is understood and agreed between the parties that this Contract is subject to the applicable laws of the State of Idaho, the duly adopted rules of the State Board of Education and the policies of the District which are, by reference, incorporated herein and made a part of this agreement the same as if fully set forth herein.

Simpson Aff. Exhibit A.

On or about the week of December 10, 2012, the School District began a systematic plan where Teachers working for the School District were required to attend mandatory "emergency" meetings conducted by the Teachers' immediate supervisory, often the teachers' building principal. Simpson Aff. ¶ 7. At those meetings, teachers were pressured by the School District to modify the terms of their Standard Teachers Contract by signing another contract for employment entitled "Addendum Contract." Simpson Aff. ¶ 10.

The "Addendum Contracts," if signed, were an agreement to take four (4) unpaid furlough days between January and May, 2013. Simpson Aff. Exhibit B. The School District required that these addendum contracts be signed and returned no later than Monday, December

17, 2012. Simpson Aff. ¶ 9. The decision to put forward these addendum contracts, however, was never actually approved by the Board of Trustees for the School District. Simpson Aff. ¶¶ 11-12.

On December 14, 2012, the Teachers wrote a letter to the Superintendent of the School District objecting on the basis that the addendum contracts violated Idaho Code §33-513(1) because the addendum contracts were not a written contract approved by the state superintendent of public instruction. Simpson Aff. ¶ 13, Exhibit C. On December 18, 2012, the Teachers again wrote the School District objecting to the addendum contracts with the additional basis that the addendum contracts violated the Rules of the Idaho State Department of Education (IDAPA 08.02.01.150). Simpson Aff. ¶ 15, Exhibit D. The School District, however, continued to pressure and enforce the addendum contracts in violation of Idaho law.

### **III. ARGUMENT**

#### **A. The Addendum Contracts Given to Teachers in December 2012 Were Not On a Form Approved by the State Superintendent of Public Instruction and Therefore Are, as a Matter of Law, Illegal.**

The Addendum contracts that were presented to the Teachers were not on a form approved by the State Superintendent of Public Instruction as required by statutory law, administrative rule and Idaho Supreme Court case law. As a result, the Addendum contracts, as a matter of law, are illegal and unenforceable.

Teacher contracts in Idaho are limited. They are limited to an approved form. A teacher's terms and conditions of employment are contained on what is commonly referred to as the "Standard Teacher Contract." Such "Standard Teacher Contracts" are published annually by the Idaho State Department of Education on their website at [http://www.sde.idaho.gov/site/educator\\_resources/contracts.htm](http://www.sde.idaho.gov/site/educator_resources/contracts.htm). The standard contracts include

contracts for administrators, Category 1, 2, 3 and renewable contract teachers, as well as retired teachers contracts and supplemental contracts. The Standard Teacher Contract itself contains the following legend at the bottom of the contract:

This contract form was prepared pursuant to Section 33-513, Idaho Code, and approved by the State Superintendent of Public Instruction, as a contract which may be used by school districts. Any other form must be approved by the State Superintendent, and reviewed for reapproval every three years.

Simpson Aff. Exhibit A.

Idaho statutory law, as well as administrative rule, is plain and unambiguous in the requirement that teachers are employed only on the contracts approved by the state superintendent of public instruction (i.e., the Standard Teacher Contract). Idaho Code § 33-513 provided, in relevant part, that the board of trustees<sup>1</sup> shall have very limited authority in its choice of contract for employment of a teacher. In fact, a school district has absolutely no choice:

The board of trustees of each school district including any specially chartered district, shall have the following powers and duties:

1. To employ professional personnel, **on written contract in a form approved by the state superintendent of public instruction**, conditioned upon a valid certificate being held by such professional personnel at the time of entering upon the duties thereunder.

(Emphasis added.)<sup>2</sup> Further, the rules of the Idaho State Board of Education specifically prohibit any deviation from the form approved by the state superintendent of public instruction. IDAPA 08.02.01.150 provides:

---

<sup>1</sup> There is nothing in the published minutes of the School District demonstrating that the Nampa Board of Trustees voted to authorize the use of the addendum contracts in the first place. Simpson Aff. ¶ 12.

<sup>2</sup> The phrases “professional personnel” and “professional employee” are used interchangeable in the statutes. See e.g. Idaho Code §33-515(5). “Professional personnel” is not defined, but “professional employee” is defined under Idaho Code §33-1272(1).

**DEVIATION FROM STANDARD EMPLOYMENT CONTRACT FORM.**

The State Superintendent of Public Instruction has approved a standard employment contract form. Any deviation from this contract form must be approved by the State Superintendent of Public Instruction and reviewed for reapproval once every three (3) years. (Section 33-513, Idaho Code)

IDAPA 08.02.01.150. (Emphasis added.)

Idaho statutory law pertaining to teachers is incorporated in each individual teacher's Teachers' Standard Contract. *Brown v. Caldwell School District No. 132*, 127 Idaho 112, 118, 898 P.2d 43, 49 (1995); *Robinson v. Joint School District No. 150*, 100 Idaho 263, 265, 596 P.2d 436, 438 (1979). The Court, in interpreting a similar education code provision, has also held that the word "shall" is imperative or mandatory, *Rife v. Long*, 127 Idaho 841, 848, 908 P.2d 143, 150 (1995). Properly promulgated administrative rules and regulations have the force and effect of law. *Higginson v. Westergard*, 100 Idaho 687, 690, 604 P.2d 51, 54 (1979), cited in *Mead v. Arnell*, 117 Idaho 660, 665, 791 P.2d 410, 415 (1990).

Where the language of a statute is plain and unambiguous, this Court must give effect to the statute as written, without engaging in statutory construction. *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999); *State v. Escobar*, 134 Idaho 387, 389, 3 P.3d 65, 67 (Ct.App.2000). The language of the statute is to be given its plain, obvious, and rational meaning. *Burnight*, 132 Idaho at 659, 978 P.2d at 219. If the language is clear and unambiguous, there is no occasion for the court to resort to legislative history or rules of statutory interpretation. *Escobar*, 134 Idaho at 389, 3 P.3d at 67.

Here there is no ambiguity whatsoever. The law is very clear that a teacher must be employed pursuant to the approved Standard Teacher Contract, and no other. The School District has no option to deviate from the Standard Teacher Contract. There is no evidence that the state superintendent of public instruction approved the School District's addendum contracts,

nor is there any approval of a deviation from the Standard Teacher Contract. A school district is not permitted to “go rogue” with its teacher contracts, and these addendum contracts are simply outside of what the statute and rule allow.

Indeed, if such addendum contracts were somehow permissible, it would eviscerate the existence of the Standard Teacher Contract. A teacher could conceivably sign a Standard Teacher Contract, and then sign an addendum contract the very next day changing any or all of the terms in the Standard Teacher Contract. In such instance, the statute and rule would be rendered entirely superfluous. “It is incumbent upon [the] Court to interpret a statute in a manner that will not nullify it and it is not to be presumed that the legislature performed an idle act of enacting a superfluous statute.” *Sweitzer v. Dean*, 118 Idaho 568, 572, 798 P.2d 27, 31 (1990). It is clear, however, from the language of both Idaho Code §33-513(1) and IDAPA 08.02.01.150 that the intent of the state legislature was to have a single, state-wide approved form to be a standardized contract for all Idaho teachers and no other.

This conclusion is further supported by the Idaho Supreme Court holding in *Rhoades v. Idaho Falls School Dist. No. 91*, 131 Idaho 827, 965 P.2d 187 (1998). In *Rhoades*, the teacher was not granted a contract for the subsequent year based upon documents that were not part of the Standard Teacher’s Contract. Specifically, the teacher in *Rhoades*, much like the teachers in this case, signed a document that was prepared by the school district and was separate and apart from the Standard Teacher’s Contract. *Id.* at 828, 965 P.2d at 188. The Idaho Supreme Court squarely held that any document other than the Standard Teacher Contract was “ineffective” and could not change a teacher rights. The Court held:

I.C. § 33-513(1) authorizes the board to employ professional personnel “on written contract in form approved by the state superintendent of public instruction.” The contract signed by the teacher and the chair of the board for the 1992-93 school year bears a legend that it was prepared pursuant to I.C. § 33-513

and that any other form of contract must be approved by the State Board of Education. There is no evidence that the other documents on which the district relies to remove the protections of the statutes and the master contract were approved by the State Superintendent of Public Instruction or the State Board of Education. Therefore, they were ineffective to change the rights the teacher had under the statutes and the master contract.

*Id.* at 830, 965 P.2d 190 (emphasis added). Certainly, a teacher is entitled to his or her statutory rights to have the terms and conditions of employment on the Standard Teacher Contract. Such statutory rights are incorporated into the Standard Teacher Contract itself.

#### IV. CONCLUSION

Based upon the foregoing, Petitioner is entitled to summary judgment on their Petition for Declaratory Judgment because Idaho Code, the administrative rule of the State Board of Education, and Idaho case law all limit a school district's ability to employ a teacher to the Standard Teacher Contract approved by the state superintendent of public instruction. To hold otherwise would nullify the law. Petitioner is likewise entitled to attorney fees and costs, and such other and further relief as the Court deems just and equitable.

DATED this 5<sup>th</sup> day of July, 2013.

IDAHO EDUCATION ASSOCIATION

By: \_\_\_\_\_

Paul J. Stark

Attorney for Plaintiff Nampa Education Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5<sup>th</sup> day of July, 2013, I caused a true and correct copy of the foregoing PETITIONER'S MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION FOR SUMMARY JUDGMENT to be served via:

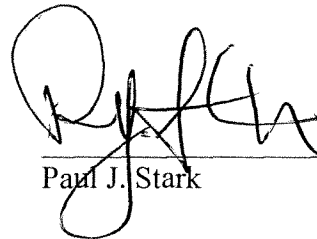
\_\_\_\_\_ U.S. Mail

\_\_\_\_\_ Facsimile Transmission

✓ Hand Delivered

to:

William F. "Bud" Yost  
Yost Law, PLLC  
4 Ogden Avenue  
P.O. Box 1275  
Nampa, Idaho 83653  
Facsimile: (208) 466-1981



\_\_\_\_\_

Paul J. Stark



Paul J. Stark, Esq.- ISB# 5919  
IDAHO EDUCATION ASSOCIATION  
620 North Sixth Street  
P.O. Box 2638  
Boise, Idaho 83701  
Telephone: (208) 333-8560  
Facsimile: (208) 344-1606

*Attorney for Petitioner*

FILED  
1140 A.M. JUL 05 2013 P.M.

JUL 05 2013

CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

NAMPA EDUCATION ASSOCIATION,	)	
	)	Case No.: CV13-2962-C
Petitioner,	)	
	)	AFFIDAVIT OF MANDY SIMPSON
vs.	)	IN SUPPORT OF PETITIONER'S
	)	MOTION FOR SUMMARY
NAMPA SCHOOL DISTRICT NO. 131,	)	JUDGMENT
	)	
Respondent.	)	
_____	)	

STATE OF IDAHO                    )  
  ) ss:  
County of Ada                    )

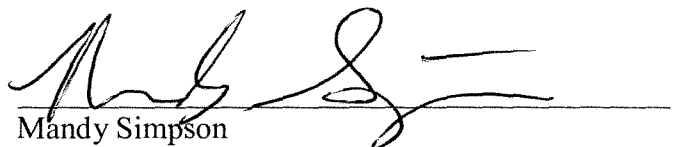
I, MANDY SIMPSON, having been duly sworn, depose and say as follows:

1. I am the President of the Nampa Education Association, Petitioner in this action.
2. The Nampa Education Association was duly chosen as the representative organization of the teachers within the Nampa School District for the 2012-2013 school year.

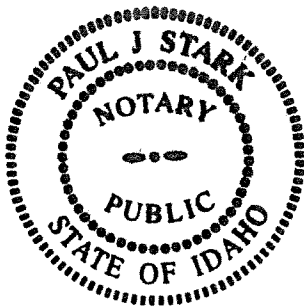
3. The Nampa Education Association was recognized by the Nampa School District as the representative organization of the teachers within the Nampa School District for the 2012-2013 school year.
4. The Nampa Education Association has been duly chosen and recognized as the representative organization of the teachers within the Nampa School District for the past several decades.
5. That in September of 2012, teachers within the Nampa School District signed a Standard Teacher Contract for the 2012-2013 school year, as teachers have for decades.
6. Attached as Exhibit "A" and incorporated by this reference are true and correct copies of the form Standard Teacher Contract (both continuing and category A contracts) offered by the Nampa School District for the 2012-2013 school year.
7. On or about the week of December 10, 2012, the Nampa School District began pressuring teachers to sign an addendum contract by requiring teachers to attend mandatory "emergency" meetings where the addendum contract was presented.
8. Attached as Exhibit "B" and incorporated by this reference is a true and correct copy of the form addendum contract (for both continuing and category A contracts).
9. Many teachers were told that the addendum contracts had to be signed and returned within a matter of a few days (December 17<sup>th</sup>).
10. Many teachers felt pressured to sign the addendum contracts by the Nampa School District and did not consider it voluntary. These teachers expressed fear of retaliation should they not sign the addendum contracts or if they were to publically state that the contracts were not voluntarily signed.

11. I personally attended all of the Nampa School Board of Trustees meetings in the fall of 2012, testifying to the School Board on multiple dates, and the Nampa School Board of Trustees itself never voted in open session as to the decision to put forward the addendum contracts.
12. I have researched the archived minutes of the Nampa School Board of Trustees and have not found any evidence that the Nampa School Board of Trustees ever voted on whether to put forward addendum contracts to the teachers of the Nampa School District.
13. During the week of December 10, 2012, where teachers were being pressured to sign the addendum contracts, I directed legal counsel to draft a letter to the Nampa School District explaining the situation.
14. Attached as Exhibit "C" and incorporated by this reference is a true and correct copy of a December 14, 2012 letter from Paul Stark to Dr. Thomas Michaelson, Superintendent of the Nampa School District.
15. As the high pressure tactics continued, I again directed legal counsel to draft a second letter to the Nampa School District explaining the situation
16. Attached as Exhibit "D" and incorporated by this reference is a true and correct copy of a December 18, 2012 letter from Paul Stark to Dr. Thomas Michaelson, Superintendent of the Nampa School District.
17. I have personal knowledge of the matters set forth in this Affidavit and, if called as a witness, could and would truthfully and competently testify to such matters.

DATED this 5<sup>th</sup> day of July, 2013, at the City of Nampa, County of Canyon, State of Idaho.

  
Mandy Simpson

SUBSCRIBED AND SWORN To before me this 5<sup>th</sup> day of July, 2013.



A handwritten signature in black ink, appearing to read "Paul J Stark", written over a horizontal line.

Notary Public for Idaho

Residing at: Meridian Idaho

My Commission expires: 4/18/18

# STATE OF IDAHO CONTINUING TEACHERS CONTRACT

THIS CONTRACT, made this 15<sup>th</sup> day of August year of 2012, by and between Nampa School District No. 131, Nampa, Idaho ("the District"), and «First Name» «Last Name» ("the Teacher").

**WITNESSETH:**

1. The District hereby employs the Teacher pursuant to Section 33-515, Idaho Code, for the duration of the 2012-2013 school year, consisting of a period of «Position Days» days, and agrees to pay the Teacher for said services a base sum of «Amount in Words» (\$«Amount») of which 1/12<sup>th</sup> shall be payable on the 25<sup>th</sup> day(s) of the months September year of 2012 to August year of 2013 inclusive, and such other monetary benefits as accorded to its certificated employees by the District.
2. Teaching assignment(s): «Description» - (Col «Col Head», Step «Row Head»)  
and such other duties as may be assigned by the District for which the Teacher is properly certified and endorsed.
3. The Teacher agrees to perform all teaching assignments made by the District in accordance with the highest professional standards and to have and maintain the legal qualifications required to teach in the aforesaid grades or subjects during all times that performance is required hereunder.
4. It is understood and agreed between the parties that this Contract is subject to the applicable laws of the State of Idaho, the duly adopted rules of the State Board of Education and the policies of the District which are, by reference, incorporated herein and made a part of this agreement the same as if fully set forth herein.
5. Any material false statement knowingly made in the written application for a position with the District shall constitute sufficient ground for voiding this Contract.
6. The District Board of Trustees may terminate or reduce the full-time equivalency status of this contract upon conclusion of the school year stated in Section 1 of this contract, without owing any further compensation, in the event that the Board institutes a reduction in force pursuant to Section 33-522, Idaho Code, resulting in the termination or reduction of the employment relationship between the District and the Teacher.
7. It is mutually understood and agreed by and between the parties that nothing herein contained shall operate or be construed as a waiver of any of the rights, powers, privileges, or duties of either party hereto, by and under the laws of the State of Idaho, except as expressly stated in this Contract.
8. The terms of this Contract shall be subject to amendment and adjustment to conform to the terms of either a Master Contract or the compensation established the Board of Trustees pursuant to Section 33-1274, Idaho Code, as such terms are applicable for the same school year as this Contract.

IN WITNESS WHEREOF the District has caused this Contract to be executed in its name by its proper officials and the Teacher has executed the same all on the date first above written.

NAMPA SCHOOL DISTRICT NO.131 CANYON COUNTY(IES) STATE OF IDAHO

\_\_\_\_\_  
TEACHER

By Scott H Kido, CHAIRMAN  
BOARD OF TRUSTEES

Attest: J. A. Jovan  
SUPERINTENDENT OR CLERK

**EXHIBIT A**

This contract form was prepared pursuant to Section 33-513, Idaho Code, and approved by the State Superintendent of Public Instruction, as a contract which may be used by school districts. Any other form must be approved by the State Superintendent, and reviewed for reapproval every three years. «DAC»

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## STATE OF IDAHO CATEGORY A TEACHERS CONTRACT

THIS CONTRACT, made this 15th day of August, year of 2012, by and between Nampa School District No. 131, Nampa, Idaho ("the District"), and «First Name» «Last Name» ("the Teacher").

WITNESSETH:

1. The District hereby employs the Teacher pursuant to Section 33-514(2)(a), Idaho Code, for the duration of the 2012-2013 school year, consisting of a period of «Position Days» days, and agrees to pay the Teacher for said services a base sum of «Amount in Words» (\$«Amount») of which 1/12<sup>th</sup> shall be payable on the 25<sup>th</sup> day(s) of the months September year of 2012 to August year of 2013 inclusive, and such other monetary benefits as accorded to its certificated employees by the District.
2. Teaching assignment(s): «Description» - (Col «Col Head» Step «Row Head») \_\_\_\_\_ and such other duties as may be assigned by the District for which the Teacher is properly certified and endorsed.
3. The Teacher agrees to perform all teaching assignments made by the District in accordance with the highest professional standards and to have and maintain the legal qualifications required to teach in the aforesaid grades or subjects during all times that performance is required hereunder.
4. It is understood and agreed between the parties that this Contract is subject to the applicable laws of the State of Idaho, the duly adopted rules of the State Board of Education and the policies of the District which are, by reference, incorporated herein and made a part of this Contract the same as if fully set forth herein, and that no property rights attach to this Contract beyond the term of this Contract.
5. Any material false statement knowingly made in the written application for a position with the District shall constitute sufficient ground for voiding this Contract.
6. It is mutually understood and agreed by and between the parties that nothing herein contained shall operate or be construed as a waiver of any of the rights, powers, privileges, or duties of either party hereto, by and under the laws of the State of Idaho, except as expressly stated in this agreement.
7. The terms of this Contract shall be subject to amendment and adjustment to conform to the terms of either a Master Contract or the compensation established the Board of Trustees pursuant to Section 33-1274, Idaho Code, as such terms are applicable for the same school year as this Contract.

IN WITNESS WHEREOF the District has caused this Contract to be executed in its name by its proper officials and the Teacher has executed the same all on the date first above written.

NAMPA SCHOOL DISTRICT NO.131 CANYON COUNTY(IES) STATE OF IDAHO

\_\_\_\_\_  
TEACHER

By Scott H Kido, CHAIRMAN  
BOARD OF TRUSTEES

Attest: J. S. Jones  
SUPERINTENDENT OR CLERK

## ADDENDUM TO CONTINUING TEACHER CONTRACT

THIS ADDENDUM TO CONTINUING TEACHER CONTRACT ("Addendum") is made this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between NAMPA SCHOOL DISTRICT NO. 131, Canyon County, Idaho, State of Idaho (hereinafter called "District") and \_\_\_\_\_ (hereinafter called "Teacher"), collectively referred to as the "parties."

### RECITALS

- A. District and Teacher entered into a State of Idaho Continuing Teacher Contract dated the \_\_\_\_ day of \_\_\_\_\_, 2012, for the school year 2012-2013.
- B. District is experiencing significant budgeting problems and will not be able to fully fund the cash flow requirements for the balance of the 2012-2013 school year.
- C. Teacher desires to participate in a voluntary program to aid District in managing its necessary cash flow requirements and enable District to meet its required and necessary obligations.
- D. Now, therefore, the parties covenant and agree as follows.

### ADDENDUM

- 1. INCORPORATION OF RECITALS: The above recitals are contractual and binding and are incorporated herein as if set forth in full.
- 2. FURLOUGH DAYS: Teacher agrees to contribute one (1) to four (4) furlough days to District from the following eligible dates (the selected furlough days shall be circled):

- January 4, 2013
- March 8, 2013
- March 22, 2013
- May 31, 2013.

A furlough day is defined as a voluntary act by Teacher in accepting certain days where Teacher will not perform his or her customary duties and will receive no compensation for those days. At the complete discretion of Teacher, he/she may provide services as required under the Continuing Teacher Contract referred to above in Recital A, but as a volunteer only.

- 3. BENEFITS: No reduction will be made to any benefits available or accruing for and on behalf of Teacher.

4. TERM: This Addendum shall apply only to the remainder of the 2012-2013 school year, and this Addendum shall terminate upon the termination date of the Continuing Teacher Contract referred to above in Recital A.

5. NO OTHER AMENDMENTS: It is agreed by and between the parties that nothing herein contained shall operate or be construed as a waiver of any of the rights, powers, privileges, or duties of either party hereto, by and under the laws of the State of Idaho, and as provided in that Continuing Teacher Contract referred to in Recital A, otherwise than is expressly stated in this Addendum.

IN WITNESS WHEREOF, District has caused this Addendum to be executed in its name by its proper officials, and Teacher has executed the same all on the date first above written.

NAMPA SCHOOL DISTRICT NO. 131  
Canyon County, Idaho

By: \_\_\_\_\_  
Chairman, Board of Trustees

ATTEST:

\_\_\_\_\_  
Clerk, Board of Trustees

\_\_\_\_\_  
Signature of Teacher

Print Name: \_\_\_\_\_



## ADDENDUM TO CATEGORY A TEACHER CONTRACT

THIS ADDENDUM TO CATEGORY A TEACHER CONTRACT ("Addendum") is made this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between NAMPA SCHOOL DISTRICT NO. 131, Canyon County, Idaho, State of Idaho (hereinafter called "District") and \_\_\_\_\_ (hereinafter called "Teacher"), collectively referred to as the "parties."

### RECITALS

- A. District and Teacher entered into a State of Idaho Category A Teacher Contract dated the \_\_\_\_ day of \_\_\_\_\_, 2012, for the school year 2012-2013.
- B. District is experiencing significant budgeting problems and will not be able to fully fund the cash flow requirements for the balance of the 2012-2013 school year.
- C. Teacher desires to participate in a voluntary program to aid District in managing its necessary cash flow requirements and enable District to meet its required and necessary obligations.
- D. Now, therefore, the parties covenant and agree as follows.

### ADDENDUM

1. INCORPORATION OF RECITALS: The above recitals are contractual and binding and are incorporated herein as if set forth in full.

2. FURLOUGH DAYS: Teacher agrees to contribute one (1) to four (4) furlough days to District from the following eligible dates (the selected furlough days shall be circled):

- January 4, 2013
- March 8, 2013
- March 22, 2013
- May 31, 2013.

A furlough day is defined as a voluntary act by Teacher in accepting certain days where Teacher will not perform his or her customary duties and will receive no compensation for those days. At the complete discretion of Teacher, he/she may provide services as required under the Category A Teacher Contract referred to above in Recital A, but as a volunteer only.

3. BENEFITS: No reduction will be made to any benefits available or accruing for and on behalf of Teacher.

4. TERM: This Addendum shall apply only to the remainder of the 2012-2013 school year, and this Addendum shall terminate upon the termination date of the Category A Teacher Contract referred to above in Recital A.

5. NO OTHER AMENDMENTS: It is agreed by and between the parties that nothing herein contained shall operate or be construed as a waiver of any of the rights, powers, privileges, or duties of either party hereto, by and under the laws of the State of Idaho, and as provided in that Category A Teacher Contract referred to in Recital A, otherwise than is expressly stated in this Addendum.

IN WITNESS WHEREOF, District has caused this Addendum to be executed in its name by its proper officials, and Teacher has executed the same all on the date first above written.

NAMPA SCHOOL DISTRICT NO. 131  
Canyon County, Idaho

By: \_\_\_\_\_  
Chairman, Board of Trustees

ATTEST:

\_\_\_\_\_  
Clerk, Board of Trustees

\_\_\_\_\_  
Signature of Teacher

Print Name: \_\_\_\_\_



**IDAHO EDUCATION ASSOCIATION**

P.O. BOX 2638, BOISE, IDAHO 83701-2638, 620 N. SIXTH STREET, 83702



208/333-8560

FAX 208/344-1606

December 14, 2012

VIA FACSIMILE & U.S. MAIL

Dr. Thomas Michaelson, Superintendent  
Nampa School District  
619 S. Canyon Street  
Nampa, Idaho 83686

Re: *Illegal Addendum Contracts*

Dear Superintendent Michaelson:

It has recently come to my attention that the Nampa School District is requiring teachers within the School District to attend mandatory meetings, and then pressuring those teachers to accept a change in terms and conditions of their employment. The teachers in Nampa are certainly very concerned and invested in the welfare of the School District. These high pressure tactics, however, are not only improper, but also illegal. For reasons discussed below, I am writing to ask that these actions immediately cease and the School District comply with the clear requirements of the law.

First, it is my understanding that the School District is requiring teachers to attend the mandatory, "emergency" meetings so that the School District can essentially pressure these educators into signing a contract labeled as an "Addendum" to the existing contracts. These meetings have been going on continually this week, and the School District has required that these "Addendums" be returned no later than Monday, December 17, 2012. It is unclear where this artificial deadline comes from. It is certainly not contained in Idaho law. What is more troubling is that by doing so, the School District has violated the provisions of Idaho Code §§33-1271, *et seq.* and acted in violation of the good faith provisions of that act. See *Gilbert v. Nampa School Dist. No. 131*, 104 Idaho 137, 657 P.2d 1 (1983). The conduct of the School District in these efforts amounts to illegal direct dealing, which is universally been held to be

acting in bad faith. *Naperville Ready Mix, Inc. v. N.L.R.B.*, 242 F.3d 744 (2001). See also *International Ass'n of Firefighters, Local No. 672 v. City of Boise City*, 136 Idaho 162, 30 P.3d 940 (2001).

With your recent employment in Idaho you may not recognize that Idaho Code §33-1271 requires all negotiations regarding the terms and conditions of employment of certificated personnel be negotiated with the duly recognized local education organization. This has long been the relationship in Nampa. Indeed, the Nampa School District has recognized the Nampa Education Association as the lawful "local education organization" and has this very year negotiated with that organization. Idaho Code §33-1271 further requires both parties to negotiate in good faith. The recent and unprecedented actions of the School District, however, have seemingly ignored the clear requirements of the law. Indeed, it is noteworthy that neither you nor your administration has even once attempted to discuss the current critical situation with Nampa Education Association President Ms. Mandy Simpson. Instead, you have chosen to dispense with the law and bargain directly with the teachers individually in an effort that can only be seen as an unsavory attempt to apply more pressure and intimidation. If it were not so, then please explain why you have made no effort to meet and discuss these matters with Ms. Simpson. This is clearly bad faith on the School District's part.

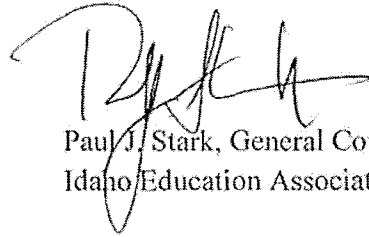
I would also like to point out that these "Addendums" are, under both statutory and Idaho Supreme Court case law, *per se* illegal. Idaho Code §33-513(1) provides that the School Board has the power and duty: "To employ professional personnel, on written contract in form approved by the state superintendent of public instruction, conditioned upon a valid certificate being held by such professional personnel at the time of entering upon the duties thereunder." (Emphasis added.) There is no indication that these "Addendum" forms have been so approved. Further, the Idaho Supreme Court has unambiguously held that any documents not approved, as required by this statute, are "ineffective to change the rights the teacher had under the statutes and the master contract." *Rhoades v. Idaho Falls School Dist. No. 91*, 131 Idaho 827, 830, 965 P.2d 187, 190 (1998). Therefore, these "Addendum" contracts that the Nampa teachers are being pressured into signing, as well as the administrator's version of the "Addendum," are illegal. Again, it is unprecedented for the Nampa School District to take such illegal actions.

I need to also note that the teachers in Nampa are very concerned with the current situation that, as you know, is not of their making. The teachers are extremely concerned as to what effect the mismanagement by the former administration will have on the education of the children in Nampa School District. Certainly, this is not a situation anyone would wish to have occurred. That said, this crisis should not be taken as an opportunity to circumvent the law and its requirements. Further, I would encourage you to actually meet with the teachers' duly

Dr. Thomas Michaelson, Superintendent  
Nampa School District  
December 14, 2012  
Page - 3

recognized representatives to collaborate on solutions. Unfortunately, as of the date of this correspondence, that has not occurred.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul J. Stark", written over the printed name and title.

Paul J. Stark, General Counsel  
Idaho Education Association

cc: Mandy Simpson  
Scott Kido, Board Chair  
Region Directors

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**IDAHO EDUCATION ASSOCIATION**

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www.idahoea.org



208/344-1341

FAX 208/336-6967

December 18, 2012

VIA FACSIMILE & U.S. MAIL

Dr. Thomas Michaelson, Superintendent  
Nampa School District  
619 S. Canyon Street  
Nampa, Idaho 83686

Re: *Addendum Contracts*

Dear Superintendent Michaelson:

I am unfortunately writing again regarding the Addendum contracts that teachers in the Nampa School District are being compelled to sign. I have spoken with numerous teachers within the School District and there is considerable pressure being applied and felt, to the point where most teachers feel as if they have no choice. Teachers are feeling that if they do not sign the Addendum contract that they will be subjected to adverse job action, retaliation and in some instances are actually having their administrator looking over the shoulder, telling them to sign the Addendum contract as it is being reviewed. Regardless of whether they are occurring under the school district's directive, the district has an obligation to stop these tactics. Again, I must renew my demand that the School District cease these activities.

I must also reiterate that the contracts that are being presented by the School District are not on forms approved by the State Superintendent of Public Instruction. *See Idaho Code §33-513(1). See also Rhoades v. Idaho Falls School Dist. No. 91*, 131 Idaho 827, 830, 965 P.2d 187, 190 (1998). Therefore, these contracts are illegal and unenforceable. Indeed, the Rules of the Idaho State Department of Education are explicit in this matter:

**DEVIATION FROM STANDARD EMPLOYMENT CONTRACT FORM.**

The State Superintendent of Public Instruction has approved a standard employment contract form. Any deviation from this contract form must be approved by the State Superintendent of Public Instruction and reviewed for reapproval once every three (3) years. (Section 33-513, Idaho Code)

IDAPA 08.02.01.150. (Emphasis added.)


**EXHIBIT D**

Dr. Thomas Michaelson, Superintendent  
Nampa School District  
December 18, 2012  
Page - 2

In light of this, I am asking that you immediately direct your administration to cease all further activities in relation to these addendum contracts. Further, I ask that you communicate with all the teachers in the Nampa School District informing them of these facts, and declaring that the Nampa School District will not attempt to enforce any addendum contracts that have already been signed.

Please respond to this correspondence as soon as possible. I appreciate your attention to this most unfortunate turn of events.

Sincerely,



Paul J. Stark, General Counsel  
Idaho Education Association

cc: Mandy Simpson  
Scott Kido, Board Chair  
Region Directors

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William F. Yost, ISB No. 1242  
Chip Giles, ISB No. 9135  
Yost Law, PLLC  
4 Ogden Avenue  
PO Box 1275  
Nampa, Idaho 83653  
Telephone: 208-466-9222  
Facsimile: 208-466-1981

Attorneys for Respondent

F I L 1800D  
A.M. P.M.  
JUL 12 2013  
CANYON COUNTY CLERK  
C. DYE, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

NAMPA EDUCATION ASSOCIATION,	)	
	)	Case No. CV 2013-2962-C
Petitioner,	)	
	)	RESPONDENT'S REPLY TO
vs.	)	PETITIONER'S MOTION FOR
	)	SUMMARY JUDGMENT
NAMPA SCHOOL DISTRICT NO. 131,	)	
	)	
Respondent.	)	
_____		

COMES NOW the Respondent, NAMPA SCHOOL DISTRICT NO. 131, ("District") by and through its counsel of record, William F. Yost and Chip Giles, of Yost Law, PLLC, and replies to Petitioner's ("NEA"), Motion for Summary Judgment as follows:

**I. INTRODUCTION**

Notwithstanding the District's position set forth in its Motion for Summary Judgment that based on lack of standing, the NEA's Petition is improper, and no genuine issue as to any material fact exists, the District files the reply herein for the limited purposes of reiterating the



District's position on standing, to provide the Court with the proper analysis regarding Idaho Code § 33-513, and to address issues concerning the affidavit of Mandy Simpson.

## II. ARGUMENT

### *A. The NEA lacks standing to bring the Petition, and likewise lacks standing to move for Summary Judgment.*

Under Idaho law, the NEA lacks standing to file the petition upon which this action is based. It follows that the NEA also lacks standing to move for Summary Judgment.

Idaho courts have ruled that in order to prove standing, "litigants generally must allege or demonstrate an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury." *Miles v. Idaho Power Company*, 116 Idaho 635, 641, 778 P.2d 757, 763 (1989). In *Miles*, the Court also held that standing requires a showing of a "distinct and palpable injury." *Id.* at 641.

As a teachers union, the NEA has not, and cannot allege an injury in fact. Furthermore, the NEA has failed to show a distinct and palpable injury. The process surrounding the addendum contracts was completely voluntary, and a completely voluntary act cannot produce a "distinct and palpable" injury.

By way of relief, Petitioner requests the previously executed voluntary addendum contracts be declared unlawful or unenforceable. Such relief will do nothing to prevent or redress the injury claimed. The agreement to volunteer furlough days has been fully executed, and declaring the agreement's unlawful will not redress any perceived or claimed injury. This failure to prove redressability is an additional bar to the NEA's standing. Pursuant to Idaho law, the NEA has failed to establish standing to bring this petition, and therefore lacks standing to request summary judgment.

Idaho courts have also addressed the issue of standing for associations ruling, "as applied to associations seeking standing for its members, this court considers whether the association has

alleged that at least one of its members faces injury and could meet the requirements of standing on an individual basis.” *In re Jerome County Bd. of Comm’rs*, 153 Idaho 298, 281 P.3d 1076, 1082 (2012).

*In re Jerome County*, concerned several environmental groups petition for review of a decision ordered by the Jerome County Board of Commissioners. The Idaho Supreme Court ruled that only groups with members whose primary residences were within one mile of the proposed site, or adjacent to the proposed site could be severely affected. The Court denied standing to other groups that did not have members living in close proximity to the proposed site. In summary, the Idaho Supreme Court refuses to grant standing to plaintiff’s unless they have been, or could be harmed by an alleged action.

Like the Plaintiffs denied standing in *Jerome County*, the NEA has failed to name any member directly harmed by the signing of the voluntary addendum contracts. In support of its Motion for Summary Judgment the NEA attaches the Affidavit of Mandy Simpson (“Ms. Simpson”). Her Affidavit does not provide any facts or allegations that she was personally harmed by the signing of an addendum contract. She appears to rely on her position as president of the NEA to speak to the alleged harm of other members, even though she alleges no harm to herself. Ms. Simpson has not, and could not have been harmed by the NEA’s alleged actions, and she does not so state in her affidavit. The Idaho Supreme Court has refused to grant standing in similar situations lacking allegations of potential or present harm.

Since Ms. Simpson’s Affidavit fails to allege a personal harm, and in the absence of any NEA members allegation of harm, the NEA fails to meet the Idaho requirements for associational standing. Therefore, under the associational standing analysis, the NEA lacks standing to bring this Motion for Summary Judgment.

**B. *Petitioner's argument that the addendum contracts are as a matter of law illegal is not supported by Idaho Statute or case law.***

The NEA argues that since the voluntary contracts presented to teachers as a one-time measure to address a financial crisis faced by the District were not on a form approved by the state superintendent of public education, the contracts are as a matter of law illegal and unenforceable. The NEA relies on Idaho Code § 33-513 which provides:

The board of trustees of each school district including any specifically chartered district, shall have the following powers and duties:

1. To employ professional personnel, on written contract in a form approved by the state superintendent of public instruction, conditioned upon a valid certificate being held by such professional personnel at the time of entering upon the duties thereunder. (Emphasis added).

The foregoing statute applies to employment contracts, otherwise known as a standard teacher contract or "master contract." The contracts in this case were voluntary agreements with teacher's for furlough days, not employment contracts pursuant to I.C. § 33-513. The NEA has failed to provide any authority which would subject the voluntary agreement signed by Nampa teachers to the purview of Idaho Code 33-513.

The only authority cited by the NEA in an attempt to apply I.C. § 33-513 to the voluntary addendum contracts is *Rhoades v. Idaho Falls School Dist. No. 91*. The facts in *Rhodes* should be considered by the Court. In *Rhoades* a teacher signed a standard teacher contract describing her salary as "Adjusted Base Salary for 190 days, 50 percent of teaching day --\$10,158.00." The chair of the district's board of trustees signed the contract on behalf of the district. The contract also provided "this contract is for one year only and is non-renewable. While you will be given consideration for any openings that may occur for the 1993-94 school year, you will need to re-apply through the regular application process." *Rhoades v. Idaho Falls School Dist. No. 91* 131

*Idaho* 827, 965 P.2d 187 (*Idaho* 1998). The District's reduction in force policy was also attached to the contract. *Id.*

The teacher in Rhodes fulfilled her obligations under the contract, and on March 29, 1993 the District Superintendent sent the following letter.

You were hired on a One Year Contract for the 1992-93 school year. This letter is to notify you that, as of this time, the school district does not anticipate needing your services for the coming year. Thank you for your services rendered to the students of School District 91 during this school year. If a future position should open for which you are qualified, I hope you would submit your application. *Id.*

The Court ultimately ruled that the Board of Trustees failed to take proper action pursuant to the then existing version of Idaho Code § 33-513(1) which provided for teacher contract renewal.

The Court found the District in Rhodes erred "when the superintendent, instead of the board, gave the teacher the reason for not reemploying her in the March 29, 1993 letter, and there was no evidence that the district implemented a reduction in force pursuant to the policy in the negotiated agreement." *Id.* at 830.

The holding in *Rhodes* requires District's to abide by Idaho Code for reductions in force, or a decision not to renew a non-continuing contract teacher's contract. The case addresses employment contracts. The holding does not analyze voluntary agreements between teachers and a school district. As a result, the ruling in *Rhodes* does nothing to support the NEA's argument that the voluntary addendum contracts are as a matter of law illegal.

Moreover, the voluntary addendum contracts were a one-time, voluntary measure on behalf of District employees. The voluntariness of the agreement is evidenced by the affidavit of Steve Kipp (former human resource officer for the District), which is properly before the Court, and attached to Respondent's Motion for Summary Judgment. In his affidavit, Mr. Kipp avers to the fact that once approximately 545 staff members volunteered one or more furlough days,

approximately 24 certified teachers later modified their agreements, either adding to or reducing the number of volunteer furlough days. (Aff. of Steve Kipp p. 4).

C. *The affidavit of Mandy Simpson is based on hearsay and Petitioner objects to consideration of portions of the affidavit pursuant to Idaho Rule of Civil Procedure 56(e).*

I.R.C.P. 56(e), Form of Affidavit – Further Testimony – Defense Required, provides in relevant part:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

To support the pertinent assertions in her affidavit regarding the coercion of teachers to sign the voluntary addendum contracts, Ms. Simpson relies on the out of court statements of others. In her affidavit Ms. Simpson alleges, “On or about the week of December 10, 2012, the Nampa School District began pressuring teachers to sign an addendum contract by requiring teachers to attend mandatory “emergency” meetings where the addendum contract was presented.” Simpson Aff. pp. 7. Ms. Simpson further states “many teachers were told that the addendum contracts had to be signed and returned within a matter of a few days.” Simpson Aff. pp. 9. Ms. Simpson also states “teachers expressed fear of retaliation should they not sign the addendum contracts or if they were to publically state that the contracts were not voluntarily signed.” Simpson Aff. pp. 10.

The above assertions are hearsay, and not subject to any hearsay exception provided by the Idaho Rules of Evidence. Additionally paragraphs 2, 3, 4, 7, 10, 13, and 14 of Ms. Simpson’s affidavit are based on hearsay. Since the testimony in paragraphs 2, 3, 4, 7, 8, 9, 10, 13 and 14 of Ms. Simpson’s affidavit would not be admissible in court, Respondent objects to consideration of those paragraphs pursuant to I.R.C.P. 56(e).

### III. CONCLUSION

The NEA has failed to respond to the District's Motion for Summary Judgment, or address the standing issue before the court. Since the NEA has failed to establish standing in order to bring this action, it follows that Petitioner also lacks standing to bring this Motion for Summary Judgment. Additionally paragraphs 2, 3, 4, 7, 8, 9, 10, 13 and 14 of the affidavit of Mandy Simpson are based on hearsay. As a result, Petitioner's Motion for Summary Judgment should be denied, Respondent's Motion for Summary Judgment should be granted, and the objection to the above-mentioned paragraphs of Ms. Simpson's affidavit should be noted by the Court.

Respectfully submitted this 12<sup>th</sup> day of July, 2013.

YOST LAW, PLLC

By: 

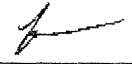
Chip Giles  
Attorney for Respondent

### CERTIFICATE OF SERVICE

I hereby certify that on this 12<sup>th</sup> day of July, 2013, I caused to be served by the method indicated below a true and correct copy of the foregoing document upon:

Paul J. Stark  
Idaho Education Association  
620 North 6<sup>th</sup> St  
PO Box 2638  
Boise, ID 83701

☐ U.S. Mail  
☐ Overnight Mail  
☐ Hand Delivery  
☒ Facsimile No. 344-1606

  
Chip Giles

Paul J. Stark, Esq.- ISB #5919  
IDAHO EDUCATION ASSOCIATION  
620 North Sixth Street  
P.O. Box 2638  
Boise, Idaho 83701  
Telephone: (208) 333-8560  
Facsimile: (208) 344-1606

**F I L E D**  
A.M. 3:45 P.M.

JUL 17 2013

CANYON COUNTY CLERK  
S BROWN, DEPUTY

*Attorney for Petitioner*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

NAMPA EDUCATION ASSOCIATION,	)	
	)	Case No.: CV13-2962-C
Petitioner,	)	
	)	PETITIONER'S MEMORANDUM
vs.	)	IN OPPOSITION TO RESPONDENT'S
	)	MOTION FOR SUMMARY
NAMPA SCHOOL DISTRICT NO. 131,	)	JUDGMENT
	)	
Respondent.	)	
	)	

**ARGUMENT**

**A. Petitioner has Standing to Bring this Action.**

Under Idaho case law precedent, Petitioner has standing to bring this matter before the court on a declaratory judgment. Accordingly, Respondent's Motion for Summary Judgment on the argument Petitioner lacks standing must be denied.

The Idaho Supreme Court, in the case of *Bear Lake Educ. Ass'n v. Board of Trs. of Bear Lake Sch. Dist. No. 33*, 116 Idaho 443, 776 P.2d 452 (1989), definitively held that an association, must like Petitioner in this case, have standing to bring an action on behalf of its teachers as well

PETITIONER'S MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION FOR  
SUMMARY JUDGMENT - 1

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as on its own behalf. In *Bear Lake*, the District Court ruled in favor of the School District on a summary judgment motion, however the Idaho Supreme Court vacated the order and remanded the case back to the District Court. *Id.* at 444, 776 P.2d at 453. Much like this case, the School District in *Bear Lake* argued that the Bear Lake Education Association did not have standing to invoke the jurisdiction of the court.

After reciting the law on standing, the Idaho Supreme Court held, “There is no question that an association may have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy.” *Id.* at 448, 776 P.2d at 457 (quoting *Warth v. Seldin*, 422 U.S. 490, 511 (1975)). The Court went on to conclude, “If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured. *Id.* Indeed, Petitioner’s “interest in having the agreement[s] enforced is germane to the Association’s purpose and affects the associational ties of all the teachers.” *Id.* at 448, 776 P.2d at 457.

Here, as in *Bear Lake*, the Nampa Education Association was chosen as the exclusive organization to represent all of the certificated educators in the Nampa School District (excluding administrators). See Affidavit of Mandy Simpson ¶¶ 2-4. See also Idaho Code §33-1273. Further, as in *Bear Lake*, the relief requested by Petitioner is that contractual terms, as well as statutory mandates, be enforced. The terms of the Standard Teacher Contract signed by all the teachers in the Nampa School District incorporate by reference the laws of the state of Idaho, the Rules of the Board of Education and the policies of the School District as follows:

It is understood and agreed between the parties that this Contract is subject to the applicable laws of the State of Idaho, the duly adopted rules of the State Board of Education and the policies of the District which are, by reference, incorporated herein and made a part of this agreement the same as if fully set forth herein.



See Affidavit of Mandy Simpson, Exhibit A. This incorporation by reference includes the incorporation of Idaho Code § 33-513 (limiting contracts to forms approved by the state superintendent of public instruction) as well as IDAPA 08.02.01.150 (prohibiting unapproved deviations from the Standard Teacher Contract). Petitioner has alleged actual or threatened injury by way of the four (4) unpaid furlough days and that the Addendum Contracts were not voluntarily entered into by Petitioner's members. See Petition for Declaratory Judgment; Affidavit of Mandy Simpson. A finding of individualized injury, however, is unnecessary. The Idaho Supreme Court, determining associational standing has held:

The question of associational standing often turns on the nature of the relief sought. When an association seeks some form of prospective relief, such as a declaration or an injunction, its benefits will likely be shared by the association's members without any need for individualized findings of injury that would require the direct participation of its members as named parties. *Hunt [v. Washington Apple Advertising Comm'n]*, 432 U.S. 333 (1977)] 432 U.S. at 343, 97 S.Ct. at 2441, 53 L.Ed.2d at 394. "Indeed," wrote the United States Supreme Court in *Hunt*, "in all cases in which we have expressly recognized standing in associations to represent their members, the relief sought has been of this kind." *Id.* (quoting *Warth*, 422 U.S. at 515, 95 S.Ct. at 2213, 45 L.Ed.2d at 364).

Moreover, the violation of statutory rights, not only by incorporation into contract, but also by virtue of their existence as standalone statutory protections for teachers, can itself create the requisite injury. As the Court further held: "[S]tanding often turns on the nature and source of the claim asserted, the actual or threatened injury may exist solely by virtue of 'statutes creating legal rights.'" *Id.* at 448-49, 776 P.2d at 457-58 (quoting *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973)). And here, as in *Bear Lake*, the possibility that the School Board would be allowed to unilaterally terminate/modify the Standard Teacher Contract "affects all of the members and, therefore, vests the Association with standing." *Id.* at 449, 776 P.2d at 458.

PETITIONER'S MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION FOR  
SUMMARY JUDGMENT - 3

The language of the Declaratory Judgment Act itself demonstrates that Petitioner has standing to bring this action and that it was the legislatures intent to allow for such actions as the case at bar. Idaho Code §10-1212 in particular demonstrate the broad nature of a declaratory judgment action, "This act is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations, and is to be liberally construed and administered." The broad scope of this act is further supported by the criteria of what sort of determinations can be sought. Idaho Code § 10-1202 provides:

Any person interested under a deed, will, written contract or other writings constituting a contract or any oral contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

(Emphasis added.) Idaho Code § 10-1213 defines "person" to include parties such as Petitioner. Moreover, a contract may be construed either before or after there has been a breach. Idaho Code § 10-1203. It is also noteworthy that a court is vested with authority to make declaratory determinations of rights "whether or not further relief is or could be claimed." Idaho Code § 10-1201.

Based upon the forgoing, Petitioner has standing to bring this declaratory judgment action and Respondent's summary judgment on these grounds must be denied.

**B. Petitioner's Claims are Not Moot.**

Petitioner's claims are not moot because there is a definite and concrete legal issue to be resolved that touches upon the legal relations of the parties having adverse legal interests.

The standard for determining whether an issue is moot in a declaratory judgment action was articulated by the Idaho Supreme Court just a few months ago in the case of *Bettwieser v. New York Irrigation Dist.*, 154 Idaho 317, 297 P.3d 1134 (2013). In *Bettwieser*, the Court held

that under Idaho's Declaratory Judgment Act, the trial court's jurisdiction is limited to cases "where an actual or justiciable controversy exists," and courts are thus precluded "from deciding cases which are purely hypothetical or advisory." *Id.* at 326, 297 P.3d at 1143 (quoting *Wylie v. Idaho Transp. Bd.*, 151 Idaho 26, 31, 253 P.3d 700, 705 (2011)). The *Bettwieser* Court went on to discuss the factors involved in determining whether a justiciable controversy exists as follows:

This Court has explained that a justiciable controversy is:

[D]istinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot .... The controversy must be definite and concrete, touching the legal relations of the parties having adverse legal interests.... It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.

*Davidson v. Wright*, 143 Idaho 616, 620, 151 P.3d 812, 816 (2006) (quoting *Weldon v. Bonner County Tax Coalition*, 124 Idaho 31, 36, 855 P.2d 868, 873 (1993)). Therefore, "[a]n action for declaratory judgment is moot where the judgment, if granted, would have no effect either directly or collaterally on the plaintiff, the plaintiff would be unable to obtain further relief based on the judgment and no other relief is sought in the action." *Wylie*, 151 Idaho at 32, 253 P.3d at 706 (quoting *Idaho Schs. for Equal Educ. Opportunity v. Idaho State Bd. of Educ.*, 128 Idaho 276, 282, 912 P.2d 644, 650 (1996)).

*Bettwieser v. New York Irrigation Dist.*, 154 Idaho 317, 297 P.3d 1134 (2013).

Applying the standards articulated above, Petitioner's claims are clearly not moot, but actual and justiciable. There is nothing hypothetical or abstract about Petitioner's claim. Respondent violated a clear and unambiguous requirement of both statute and rule by creating its own unapproved contract that modified the terms and conditions of employment existing in the approved Standard Teacher Contract. Then the School District administration acting alone and without any approval of the School Board required teachers to attend mandatory "emergency" meetings where many were pressured to sign the addendum contracts. See Affidavit of Mandy

Simpson. By doing so, teachers in the school district had their contractual and statutory protections violated. This is not a hypothetical or abstract situation, but a definite and concrete controversy, touching the legal relations of the Nampa School District and its teachers. Thus, a judgment in favor of Petitioner in this matter would have a direct effect on both Petitioner and all the teachers because it would prevent this sort of illegal activity in the future and either would be able to obtain further relief based on the judgment under Idaho Code § 10-1201. It simply cannot be said that judgment if granted to Petitioner "would have no effect either directly or collaterally on [Petitioner]." *Bettwieser, supra*. In short, there is an actual and justiciable controversy in this matter that had real financial consequences that is also capable of being repeated in the future.

Respondent asserts that due to the mere passage of time that Petitioner's claims are moot. The Idaho Supreme Court, however, has squarely rejected such "passage of time" arguments. *See School Dist. No. 351 Oneida County v. Oneida Ed. Ass'n*, 98 Idaho 486, 489, 567 P.2d 830, 833 (1977). *See also Robinson v. Bodily*, 541 P.2d 623, 624, 97 Idaho 199, 200 (1975); *Nelson v. Marshall*, 94 Idaho 726, 728, 497 P.2d 47, 49 (1972).

In addition, as a matter of public policy, these teacher protections should be safeguarded from illegal modifications under so called addendum contracts. Whether some addendum contracts may have been voluntary and others may not have been is irrelevant if the contracts themselves were illegal *ab initio*. Since the right to have a teaching contract only on a form approved by the state superintendent of public instruction is established by statute, there is an issue of whether such modifications or waivers, voluntary or otherwise, are prohibited as a matter of public policy. There appears to be little by way of Idaho Supreme Court case law on this issue. Legal scholars, however, have explained that when a law is established for a public

reason, it cannot be contravened by a private agreement restricting rights guaranteed under a statute:

It is obvious what when a right, a privilege, or a defense is conferred upon an individual by the law, it is conferred upon him because it is believed to be in the public interest to do so. In many such cases it is believed to be contrary to the public interest to permit him to waive or bargain away the right, privilege, or defense; and when it is so believed the attempted waiver or bargain is inoperative. In these cases the waiver or bargain may itself be described as 'illegal' but only in the sense that it is legally inoperative.

6A Corbin, *Contracts*, § 1515 "Power to Waive or Bargain Away Rights and Defenses Conferred by Statute" pp. 728-731.

The proper manner to modify the terms and conditions of a Standard Teacher Contract is to either utilize the collective bargaining process contained in Idaho Code § 33-1271 *et seq.*, or to declare a financial emergency pursuant to Idaho Code §33-522. There is simply no statutory authority whatsoever for a school district to draft its own unapproved<sup>1</sup> contracts changing the terms of employment, and then bypass the exclusive bargaining representative (see Idaho Code §33-1273) and direct dealing with the teachers. See *Naperville Ready Mix, Inc. v. N.L.R.B.*, 242 F.3d 744 (2001).

Accordingly, Petitioner's claims are not moot and summary judgment on these grounds must be denied.

### **C. Petitioner's Claims are Ripe.**

There is a real and substantial controversy as to whether the addendum contracts were legal. The illegality of those contracts would make modifications of the Standard Teacher

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<sup>1</sup> Unapproved by either the superintendent of public instruction and/or by the Nampa School District Board of Trustees. See *Gilmore v. Bonner County School Dist. No. 82*, 132 Idaho 257, 260, 971 P.2d 323, 326 (1999) ("The board has the responsibility and exclusive authority to employ both professional and noncertificated personnel necessary to maintain and operate the schools in the district. The board and the teachers within the school district expect that the board will make employment decision and that those decisions will follow the correct statutory procedure.") (citations omitted.)

Contracts void as a matter of law. Further, the furlough days that came about from the illegal addendum contracts have real and significant financial consequences upon the already burdened teachers in the school district. Thus, the illegality of the addendum contracts is ripe for the court's consideration and Respondent's motion for summary judgment on ripeness grounds must be denied.

The Idaho Supreme Court has held: "The traditional ripeness doctrine requires a petitioner or plaintiff to prove 1) that the case presents definite and concrete issues, 2) that a real and substantial controversy exists, and 3) that there is a present need for adjudication." *Noh v. Cenarrusa*, 137 Idaho 798, 801, 53 P.3d 1217, 1220 (2002) (citing *Boundary Backpackers v. Boundary Cnty.*, 128 Idaho 371, 376, 913 P.2d 1141, 1146 (1996)).

As argued above, this case presents definite and concrete issues. The statutory requirement that teachers only be employed on a form approved by the superintendent of public instruction is clear and unambiguous. The rule of the State Board of Education that there can be no deviation from the approved Standard Teacher Contract is likewise clear and unambiguous. The Respondent flatly ignored these important protections for teachers and crafted their own contract modifying the approved form for their own purposes. The Respondent then forced teachers to attend a mandatory "emergency" meeting to procure the signing of the illegal contracts. Further, should the court not address these issues, there is nothing to prevent these improper and illegal actions from occurring in the future. The mere passage of time will continue to be asserted as a mechanism to violate the clear mandates of the law. Real and concrete issues are currently before the court, which need to be addressed to prevent such actions in the future and to uphold the statutory protections of teachers.

A real and substantial controversy exists as well. Petitioner maintains that the addendum contract, voluntary or not, are *per se* illegal as a matter of law. See *Morrison v. Young*, 136 Idaho 316, 317, 32 P.3d 1116, 1117 (2001) ("Whether a contract is illegal is a question of law for the Court to determine from all the facts and circumstances of each case."). Respondent's position is that the addendum contracts are legal and binding. See *Answer to Petition for Declaratory Judgment*. Whether such addendum contracts are legal or illegal is a real and substantial difference.

Lastly, there is an absolute and present need for adjudication. The use of an addendum contract by Respondent is something that has not occurred before in Idaho. Respondent is plowing new soil by executing a Standard Teacher Contract in September 2012 and then drafting its own unapproved contract just 3 months later. Further, the undisputed fact that the School Board did not approve of such addendum contracts is also unprecedented in Idaho. Such actions by Respondent, if upheld, would render the statute protecting teachers from such conduct a nullity. See *Bradbury v. Idaho Judicial Council*, 149 Idaho 107, 116, 233 P.3d 38, 47 (2009) ("[I]t is not to be presumed that the legislature performed an idle act of enacting a superfluous statute."). The parties need an adjudication of this issue for not only this immediate matter, but also future attempts to bypass the statutory protections of teachers.

#### CONCLUSION

Based upon the foregoing, Respondent's summary judgment motion must be denied.

DATED this 25<sup>th</sup> day of July, 2013.

IDAHO EDUCATION ASSOCIATION

By: 

Paul J. Stark

Attorney for Plaintiff Nampa Education Association

PETITIONER'S MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION FOR  
SUMMARY JUDGMENT - 9

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17<sup>th</sup> day of July, 2013, I caused a true and correct copy of the foregoing PETITIONER'S MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT to be served via:

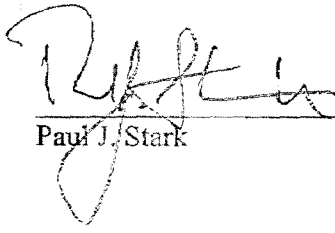
\_\_\_\_\_ U.S. Mail

X \_\_\_\_\_ Facsimile Transmission

\_\_\_\_\_ Hand Delivered

to:

William F. "Bud" Yost  
Yost Law, PLLC  
4 Ogden Avenue  
P.O. Box 1275  
Nampa, Idaho 83653  
Facsimile: (208) 466-1981

  
\_\_\_\_\_  
Paul J. Stark

PETITIONER'S MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION FOR  
SUMMARY JUDGMENT - 10

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William F. Yost, ISB No. 1242  
Chip Giles, ISB No. 9135  
Yost Law, PLLC  
4 Ogden Avenue  
PO Box 1275  
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Telephone: 208-466-9222  
Facsimile: 208-466-1981

Attorneys for Respondent

**F I L E D**  
A.M. 4:20 P.M.

**JUL 25 2013**

**CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY**

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

NAMPA EDUCATION ASSOCIATION,	)	
	)	<b>Case No. CV 2013-2962-C</b>
Petitioner,	)	
	)	<b>RESPONDENT'S REPLY TO</b>
vs.	)	<b>PETITIONER'S MEMORANDUM IN</b>
	)	<b>OPPOSITION TO RESPONDENT'S</b>
NAMPA SCHOOL DISTRICT NO. 131,	)	<b>MOTION FOR SUMMARY JUDGMENT</b>
	)	
Respondent.	)	

COMES NOW the Respondent, NAMPA SCHOOL DISTRICT NO. 131, ("District") by and through its counsel of record, William F. Yost and Chip Giles, of Yost Law, PLLC, and replies to Petitioner's Memorandum in Opposition to Respondent's Motion for Summary Judgment as follows:

**ARGUMENT**

**A. The voluntary agreements to take furlough days were not subject to Idaho Code Section 33-513.**

The reply regarding standing is under Section B below. The issue regarding the voluntary agreements between the teachers and the District is not subject to Idaho Code Section 33-513, which provides as follows:

RESPONDENT'S REPLY TO PETITIONER'S MEMORANDUM IN OPPOSITION TO  
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT - 1

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The board of trustees of each school district including any specifically chartered district, shall have the following powers and duties:

1. To employ professional personnel, on written contract in a form approved by the state superintendent of public instruction, conditioned upon a valid certificate being held by such professional personnel at the time of entering upon the duties thereunder. (Emphasis added.)

Idaho Code Section 33-513 applies only to the initial teacher employment contracts, and does not apply to the voluntary agreements regarding furlough days used by the District. Petitioner has provided no authority to subject the voluntary agreements to subject to Idaho Code Section 33-513. The intent of the agreements regarding furlough days and the voluntary nature of those agreements is absolutely clear. These agreements speak for themselves, as there is no ambiguity or any lack of clarity. *The City of Meridian v. Petra Incorporated*, 154 Idaho 425, 299 P.3d 232 (2013).

If a written contract is complete upon its face and unambiguous, and no party alleges any fraud or mistake, "extrinsic evidence of prior or contemporaneous negotiations or conversations is not admissible to contradict, vary, alter, add to, or detract from the terms of the contract."

*The City of Meridian*, 299 P.3d 232, 241, citing *Howard v. Perry*, 141 Idaho 139, 141, 106 P.3d 465, 467 (2005).

The voluntary agreements with the teachers of the District were not employment contracts by definition, and were only one of several mechanisms utilized by District to temporarily aid the significant cash-flow problem.

**B. The Idaho Supreme Court's decision in *Bear Lake Educ. Ass'n v. Board of Trs. of Bear Lake School Dist. No. 33* does not establish standing for Petitioner.**

In its Memorandum in Opposition, Petitioner seeks to establish standing based on the Idaho Supreme Court's ruling in *Bear Lake Educ. Ass'n v. Board of Trs. of Bear Lake School Dist. No. 33*, 116 Idaho 443, 776 P.2d 452 (1989). *Bear Lake* involved the Bear Lake Education

Association's petition to compel the Bear Lake School District Board of Trustees to honor a provision of the Districts master agreement regarding arbitration of a grievance. *Id.* One issue before the Court was whether the association could assert standing. On review the Idaho Supreme Court granted the association standing, recognizing that the Bear Lake Education Association was a party to the master agreement. (Emphasis added).

In *Bear Lake*, the court dealt with a master agreement executed by the Bear Lake School District and the Bear Lake Education Association.

The Supreme Court for the State of Idaho looked to the United States Supreme Court for guidance in defining associational standing, holding:

There is no question that an association may have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy. Moreover, in attempting to secure relief from injury to itself the Association may assert the rights of its members, at least so long as the challenged infractions adversely affect its members' associational ties. *Id.* at 457 (citing *NAACP v. Alabama*, 357 U.S. 449 (1958)).

In *Bear Lake*, the education association's petition involved a member's right to arbitrate his grievance and the refusal to arbitrate by the district. The right was provided for in the master agreement. Based upon a clearly defined injury (a refusal to arbitrate), the Idaho Supreme Court held that the denial of the grievance process adversely affected association member's associational ties, "since any breach of the master agreement would in turn be injurious to the association." *Bear Lake Educ. Ass'n*, 116 Idaho at 457.

In this case before the Court, NEA is not a party to the teacher voluntary addendum contracts. Additionally, the NEA has failed to provide the Court with any evidence of injury to itself, or an infraction adversely affecting any of its member's associational ties. The only evidence before the Court is the Affidavit of Mandy Simpson, which fails to allege any injury to

herself, any infraction adversely affecting her tie to the NEA as a member, or immediate or threatened harm.

The *Bear Lake* Court further held:

The association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit. *Bear Lake Educ. Ass'n* 116 Idaho at 457, citing *Sierra Club v. Morton* 405 U.S. 727, 734-41 (1972).

In *Bear Lake*, the denial of the right to arbitrate created an immediate injury. Had the injured teacher filed individually, a justiciable claim would have then existed. That would be sufficient under the *Bear Lake* case to allow the NEA to have standing. However, the NEA has failed to properly allege that any of its members are or were suffering an immediate or threatened injury resulting from entering into a voluntary addendum to contribute furlough days.

Lastly, the *Bear Lake* Court held:

Any injury to an individual teacher within the Association as a result of breaching the Master Agreement would in turn be injurious to the Association. Both the Association as a party to the agreement, and each individual teacher as a member of the Association, have an interest in having the agreement enforced and interpreted for this and future relations. *Bear Lake Educ. Ass'n* 116 Idaho at 457.

The NEA has failed to provide any evidence to this Court that any individual teacher has been injured, or that any member of the NEA has any interest in the requested relief of declaring the addendum contracts unlawful and unenforceable. Therefore, unlike *Bear Lake*, there is no injury to an individual teacher which would also be injurious to the NEA. The NEA cannot establish standing under the legal analysis and holding in *Bear Lake*.

The NEA also fails to establish standing under Idaho Code. Idaho Code 53-707, Capacity to Assert and Defend – standing, provides:

(1) A nonprofit association, in its name, may institute, defend, intervene or participate in a judicial, administrative or other governmental proceeding or in an arbitration, mediation or any other form of alternative dispute resolution.

(2) A nonprofit association may assert a claim in its name on behalf of its members if one (1) or more members of the nonprofit association have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes and neither the claim asserted nor the relief requested requires the participation of a member.

The NEA can only assert a claim in its name on behalf of its members if: (1) One or more members have standing to assert a claim; (2) the interest the NEA seeks to protect is germane to its purpose; and (3) neither the claim asserted nor the relief requested requires the participation of a member.

The NEA has failed to establish standing as no NEA member can "allege or demonstrate an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury." *Miles v. Idaho Power Co.*, 116 Idaho 635, 641 P.2d 757, 763 (1989). Since the NEA cannot produce a member with a redressable injury, the NEA does not have standing under Idaho Code Section 53-707.

The interest sought by the NEA of asking this court to declare that an executed and fully-performed voluntary agreement, (of which it is not a party to) unlawful or unenforceable is not germane to the NEA's purpose. Lastly, the claim asserted by the NEA requires the participation of a member, and at this point, the NEA has failed to provide at least one member to claim such injury. As a result, the NEA fails to meet its burden under Idaho Code Section 53-707.

**C. Based on Idaho case law, Petitioner's claim is moot.**

The teachers who volunteered to take furlough days without pay and executed the voluntary addendum contracts have fully performed and taken the furlough days; and, therefore, no controversy exists.

Since no controversy exists, and Petitioner's claim is moot. Petitioner cites the recently decided case of *Bettwieser v. New York Irrigation Dist* which held that under Idaho's Declaratory Judgment Act a trial court's jurisdiction is limited to cases "where an actual or justiciable controversy exists" and courts are precluded "from deciding cases which are purely hypothetical or advisory." *Bettwieser v. New York Irrigation Dist.*, 154 Idaho 317, 297 P.3d 1134 (2013).

Petitioner correctly defines the standard adopted by the court, but arrives at the wrong conclusion. *Bettwieser* and other cases cited in Respondent's motion stand for the proposition that an issue is moot if there is no justiciable controversy. (See *Idaho County Property Owners Ass'n, Inc. v. Syringa*, "an issue is moot if it presents no justiciable controversy and a judicial determination will have no practical effect on the outcome;" and *Koch v. Idaho County*, 145 Idaho 158, 163 177 P.3d 372, 377 (2008), "... an issue will become moot if it does not present a real and substantial controversy that is capable of being concluded by judicial relief.")

The addendum contracts at issue before this Court were voluntary and have now been completely performed by those teachers who volunteered furlough days. This court is unable to grant such relief. *Id.* The Court would be required to decide a hypothetical case and/or render an advisory opinion. There is no authority presented to the court that establishes any violation of a statute or rule by the District, or to support any determination that the voluntary addendum contracts were illegal as a matter of law. It would be the position of District that *Bettwieser* stands for the proposition that an advisory opinion would be precluded as being moot, and such a decision is supported by the cases cited above by the District dealing with the issue of mootness.

**D. Petitioner's claims fail under the Idaho ripeness doctrine.**

As provided in this Reply, and in Respondent's Memorandum in Support of its Motion for Summary Judgment, it is clear to the Respondent that Petitioner has failed to present a definite and concrete issue as it has failed to submit any evidence to this Court of any injury. *Noh v. Cenarrusa*, 137 Idaho 798, 801, 53 P.3d 1217, 1220 (2002) (citing *Boundary Backpackers v. Boundary Cnty.*, 128 Idaho 371, 376, 913 P.2d 1141, 1146 (1996)). As stated in Respondent's first Memorandum in Support of its Motion for Summary Judgment, there is no real or substantial controversy in this matter as the voluntary addendum contracts have been fully executed and performed. Absent an injury and/or a substantial controversy, there is no need for adjudication, and Petitioner's claim fails under the ripeness doctrine.

**CONCLUSION**

Respondent's Motion for Summary Judgment should be granted, and Petitioner's Cross Motion for Summary Judgment should be denied.

Respectfully submitted this 25<sup>th</sup> day of July, 2013.

YOST LAW, PLLC

By: 


\_\_\_\_\_  
Chip Giles  
Attorney for Respondent

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of July, 2013, I caused to be served by the method indicated below a true and correct copy of the foregoing document upon:

Paul J. Stark  
Idaho Education Association  
620 North 6<sup>th</sup> St  
PO Box 2638  
Boise, ID 83701

☐ U.S. Mail  
☐ Overnight Mail  
☐ Hand Delivery  
☒ Facsimile No. 344-1606

  
\_\_\_\_\_  
Chip Giles

RESPONDENT'S REPLY TO PETITIONER'S MEMORANDUM IN OPPOSITION TO  
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT - 8

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Paul J. Stark, Esq.- ISB #5919  
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*Attorney for Petitioner*

**FILED**  
A.M. 1:25 P.M.

**JUL 25 2013**

**CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY**

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

NAMPA EDUCATION ASSOCIATION,	)	
	)	Case No.: CV13-2962-C
Petitioner,	)	
	)	PETITIONER'S REPLY MEMORANDUM
vs.	)	IN SUPPORT OF PETITIONER'S
	)	MOTION FOR SUMMARY
NAMPA SCHOOL DISTRICT NO. 131,	)	JUDGMENT
	)	
Respondent.	)	
_____	)	

**ARGUMENT**

- A. It is Undisputed that the "Addendum Contracts" Were Not on a Form Approved by the State Superintendent of Public Instruction and are Therefore, as a Matter of Law, Illegal.**

Respondent has not raised any issue of fact, beyond mere allegations and denials, as to the issue of whether the addendum contracts were on a form approved by the state superintendent of public instruction. There is absolutely no evidence in the record whatsoever that the addendum contracts were so approved. Accordingly, there is no issue of material fact on this issue and this Court, as a matter of law, should rule that the addendum contracts were illegal.

PETITIONER'S REPLY MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION FOR SUMMARY  
JUDGMENT - 1

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Idaho Rule of Civil Procedure 56(e) set forth the requirements opposing a motion for summary judgment, providing in pertinent part as follows:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of that party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

*Worthen v. State*, 96 Idaho 175, 176, 525 P.2d 957, 958 (1974); *Ambrose v. Buhl Joint School District No. 412*, 126 Idaho 581, 584, 887 P.2d 1088, 1091 (Ct. app. 1995). Two well-respected commentators on federal summary judgment practice have made clear that a party opposing a motion for summary judgment may not rely on allegations, assertions or speculation to raise a genuine issue of material fact; rather, such party must present specific evidence in order to defend a summary judgment motion. *C. Wright, A. Miller & Kane*, "Federal Practice & Procedure: Civil 3d, § 2739 (1998) at pp. 378-389 and cases cited therein; 11 Moore's Federal Practice, § 56.13[2] and [4] (Matthew Bender 3rd ed. 2001) and cases cited therein.

Rather than address the substantive issue of the legality of the addendum contracts, Respondent instead has chosen to attempt to blur the issue by resting their opposition on a false theory that the addendum contracts were "voluntary" and therefore a violation of the statute (33-513) and the Rule (IDAPA 08.02.01.150) are of no consequence. Indeed, it may be said of nearly all contracts in Idaho, including the Standard Teacher Contract, that such is entered into voluntarily. Whether the addendum contract was voluntary or not is a simply a red herring. There is no "voluntary" exception or qualifier to Idaho Code § 33-513 or IDAPA 08.02.01.150. The law is clear and unambiguous. A teacher's employment can only be governed by an approved form and there can be no deviation from the approved form. Whether Respondent claims it was voluntary or not is irrelevant to this analysis due to the undisputed fact that there is

no evidence in that record that the addendum contract was ever approved. Further, Respondent has not at any time even alleged that it was approved.

Moreover, some statutory rights cannot be waived. In this case, it is quite obvious that the legislature, by enacting the requirement of approved forms in Idaho Code § 33-513, and prohibiting any unapproved deviations in IDAPA 08.02.01.150, intended to protect teachers from just the sort of gerrymandering, whether it was voluntary or not. Taking the Respondent's argument to its logical conclusion, one could equally say that truth in lending laws governing the actions between a bank and a borrower can be voluntarily waived by a bank drafted addendum contract. Certainly there exists the same disparity in power between a bank and a lender as there is between a teacher and the School District. The same can be said for protections under the Fair Labor Standards Act where an employee waives their statutory right to overtime pay under an addendum contract. Stated simply, there are statutory protections established to protect individuals that cannot be waived, no matter how strenuous the employee may wish to believe that the agreement was truly voluntary. That is not the issue. The issue is whether the employer complied with the clear mandates of the law. In this situation, Respondent did not.

**B. The Nampa Education Association Has Standing to Pursue This Action.**

Pursuant to Idaho Supreme Court case law, the Nampa Education Association has standing to bring this action. Particularly, the case of *Bear Lake Educ. Ass'n v. Board of Trs. of Bear Lake Sch. Dist. No. 33*, 116 Idaho 443, 776 P.2d 452 (1989) is on point and controlling.

In *Bear Lake*, the Bear Lake Education Association appealed the granting of summary judgment in favor of the School District in relation to the School District's refusal to adhere to

provisions of the Master Agreement.<sup>1</sup> On appeal, the School District contested the standing of the education association to maintain the action against the school district. These are the exact same arguments being presented in this case.

The Court in *Bear Lake* addressed the same arguments being presented in the case at bar. Respondent's arguments revolve around two premises: First, the Nampa Education Association has not suffered any injury. In *Bear Lake* the Court addressed the injury argument and held, "Any injury to an individual teacher within the Association as a result of breaching the Master Agreement would in turn be injurious to the Association." *Id.* at 448, 776 P.2d at 457. The Court went on to declare "Further, as standing often turns on the nature and source of the claim asserted, the actual or threatened injury may exist solely by virtue of 'statutes creating legal rights.'" *Id.* at 448-49, 776 P.2d at 457-58 (quoting *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973)).

In this case, the Nampa Education Association, much like the Bear Lake Education Association, has associational standing because an injury to any one of the teachers by the Respondent's statutory violations, "would in turn be injurious to the Association." *Bear Lake, supra*. Also, the fact that Idaho Code § 33-513 is a statute creating rights (or better yet protections), this may be the sole basis of actual or threatened injury.

Respondent also contests standing on the part of the Nampa Education Association on an assertion that any relief would do nothing to prevent future harm or redress current harm. Respondent's basis for this argument is that in the time that it has taken to get before this Court

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<sup>1</sup> Respondent in its *Respondent's Reply to Petitioner's Motion for Summary Judgment* (at p. 4) confuse the Standard Teacher Contract and the Master Agreement. For clarity, a Standard Teacher Contract is an individual contract signed by each teacher in every school district in Idaho. The Standard Teacher Contract incorporates by reference the terms of the Master Agreement. A Master Agreement (a/k/a Collective Bargaining Agreement) is a contract negotiated by the local education organization (see Idaho Code §§ 33-1272, 1273) on behalf of all teachers within the bargaining unit, both member and non-member of the association.

the illegal contracts have been fully performed, and therefore there is no harm. There is no case law to support such an assertion. Indeed it would be a grave injustice to allow a statutory violation to occur and then strike down an attempt to seek judicial relief due to the mere passage of time.

The Nampa Education Association has an interest in pursuing this claim on behalf of its members and the non-members it represents not only to gain the ability to redress the past statutory and rule violations (see Idaho Code § 10-1201), but also to prevent such statutory and rule violations in the future. If the Respondent is allowed to violate the statute and rule in this contract year, there is nothing to prevent it from happening again and again.

It is noteworthy that Respondent's arguments in opposition to Petitioner's Motion for Summary Judgment focus nearly entirely on standing, and avoid the very merits of the claims, namely the legality or illegality of the addendum contracts. Accordingly, once the Nampa Education Association's standing to bring this matter has been established, there is virtually no assertions or argument on the part of Respondent contradicting the assertion that the statute and rule relating to teacher contracts have been violated. Therefore, this Court should grant Petitioner's motion for summary judgment.

**C. Respondent's Attempt to Distinguish the "Addendum Contract" from an Employment Contract is Unfounded.**

The addendum contract is an agreement that changes the terms and conditions of a teacher's employment. There can be no dispute that this is an employment contract. Further, there has been no argument presented contesting the assertion that the addendum contract was never approved by the state superintendent of public instruction. Further, there is no argument contradicting the assertion that the Nampa School District Board of Trustees ever approved such

addendum contract. In short, it cannot be disputed that the addendum contracts are illegal and unenforceable.

First, the addendum contracts are indisputably employment contracts as contemplated in Idaho Code § 33-513. The addendum contract is titled "Addendum to Continuing Teacher Contract." See Affidavit of Steve Kipp, Exhibit A. The contract is not a standalone contract, but is an unauthorized contractual modification of the Standard Teacher Contract. The first "Recital" of the addendum contract provides "District and Teacher entered into a State of Idaho Continuing Teacher Contract dated \_\_\_\_ day of Sept, 2012, for the school year 2012-2013." *Id.* Later in paragraph 1 of the addendum contract this Standard Teacher Contract is incorporated into the addendum contract:

1. INCORPORATION OF RECITALS: The above recitals are contractual and binding and are incorporated herein as if set forth in full.

*Id.* The addendum contract discusses changes in the number of days that will be worked (paragraph 2), the term of the agreement is the same as the school year and terminates at the same time the Standard Teacher Contract Terminates (paragraph 4), and is signed by the teacher (employee) and the Chairman of the Nampa School District Board of Trustees (employer). *Id.* Moreover, the Human Resource Officer of the Nampa School District "coordinated the presentation process of the agreements from administration to teachers and personnel." *Id.* ¶ 3. Despite all this, Respondent now argues that this is not a contract of employment. Such arguments are disingenuous and defy the plain language of the document itself.

Second, Respondent has not attempted to argue that the addendum contract was on a form approved by the state superintendent of public instruction, as required. This amounts to a concession that the addendum contract violates Idaho Code § 33-513. As such, Petitioner's summary judgment motion must be granted.

Third, Respondent has not presented any evidence of the Nampa School District Board of Trustees approval of these addendum contracts. Idaho law is explicit in the requirement that all employment decisions can only be made by the Board of Trustees. In *Gilmore v. Bonner County School Dist. No. 82*, 132 Idaho 257, 260, 971 P.2d 323, 326 (1999), the Idaho Supreme Court made it explicit that employment authority must come from the Board of Trustees.

Under Idaho Code § 33-501 school districts are governed by a board of trustees. The board has the responsibility and exclusive authority to employ both professional and noncertificated personnel necessary to maintain and operate the schools in the district. *I.C. § 33-511; I.C. § 33-513; I.C. § 33-517*. The board and the teachers within the school district expect that the board will make employment decisions and that those decisions will follow the correct statutory procedure. *Brown v. Caldwell School Dist. No. 132*, 127 Idaho 112, 898 P.2d 43 (1995); *Rhoades v. Idaho Falls School Dist. No. 91*, 131 Idaho 827, 965 P.2d 187 (1998). They can rely upon employment decisions made in accordance with those procedures. *Corum v. Common School Dist. No. 21*, 55 Idaho 725, 47 P.2d 889 (1935).

*Id.* at 260, 971 P.2d at 326. Since there is no evidence in the record that the Nampa School District Board of Trustees authorized the addendum contract, in addition to the lack of evidence of approval by the state superintendent of public instruction, the addendum contracts are void. Accordingly, Petitioner's motion for summary judgment should be granted.

**C. Respondent's Objections to the Affidavit of Mandy Simpson are Without Merit.**

The affidavit of Mandy Simpson demonstrates that Ms. Simpson, as both a teacher in the Nampa School District and as the President of the Nampa Education Association, has personal knowledge of the facts contained in her affidavit. Accordingly, Respondent's objections should be overruled.

Respondent objects to Ms. Simpson's affidavit on the grounds of hearsay, and argues that such statements are inadmissible. Specifically, Respondent objects to paragraphs 2, 3, 4, 7, 10, 13 and 14. The Idaho Rules of Evidence define hearsay as "a statement, other than one made by

the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." I.R.E. 801(c). Petitioner will address each one of these paragraphs below.

Paragraphs 2, 3 and 4 are statements by Ms. Simpson declaring that the Nampa Education Association was chosen and recognized by the Nampa School District as the exclusive representative of the teachers in the Nampa School District for the 2012-2013 school year, as it had been for several decades before. Ms. Simpson established that she is the President of the Nampa Education Association in paragraph 1 of her affidavit. As President, certainly she can testify on behalf of the organization she represents. Much like a witness under Idaho Rule of Civil Procedure 30(b)(6), Ms. Simpson represents the Nampa Education Association. It is not hearsay for her to testify as to the status of the Nampa Education Association.

Likewise, paragraphs 13 deals with Ms. Simpson asking legal counsel to prepare a correspondence on behalf of the Nampa Education Association to Respondent, and paragraph 14 is a copy of said correspondence. These are not hearsay statements, but matters upon which Ms. Simpson has direct, first-hand knowledge. If testifying, Ms. Simpson could be subject to cross examination as to these statements. These are not out-of-court statements by someone other than Ms. Simpson. The correspondence is not "offered in evidence to prove the truth of the matter asserted" (I.R.E. 801(c)), but rather a demonstrative evidence of the actions she had requested to be completed. At the very least, exceptions under Idaho Rule of Evidence 803(6) and (8) would apply.

Respondent further objects to paragraphs 7 and 10 of Ms. Simpson's affidavit. What Respondent does not acknowledge is that Ms. Simpson is not only the President of the association, representing all members of the bargaining unit, but that she is also a teacher herself in the Nampa School District. Idaho Code 33-1272 requires Ms. Simpson to be a teacher in the



Nampa School District. As such, she has personal knowledge of the events described in paragraphs 7 and 10. In paragraph 15 she so testifies. Further, as the President of the exclusive representative organization of all the teachers, she is required under the Duty of Fair Representation to communicate with all the teachers within the bargaining unit. Thus, in addition to personal knowledge, Ms. Simpson has knowledge of what the membership of the Nampa Education Association and other teachers were experiencing. As the representative of the association, Ms. Simpson is allowed to testify as to the state of mind of her membership. See I.R.E. 803(3).

For the reasons discussed above, Respondent's objections to the affidavit of Ms. Simpson should be overruled.

**CONCLUSION**

Based upon the foregoing, Petitioner is entitled to summary judgment on their Petition for Declaratory Judgment.

DATED this 25<sup>th</sup> day of July, 2013.

IDAHO EDUCATION ASSOCIATION

By: \_\_\_\_\_

Paul J. Stark

Attorney for Plaintiff Nampa Education Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25<sup>th</sup> day of July, 2013, I caused a true and correct copy of the foregoing PETITIONER'S REPLY MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION FOR SUMMARY JUDGMENT to be served via:

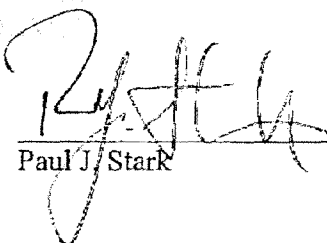
\_\_\_\_\_ U.S. Mail

X \_\_\_\_\_ Facsimile Transmission

\_\_\_\_\_ Hand Delivered

to:

William F. "Bud" Yost  
Yost Law, PLLC  
4 Ogden Avenue  
P.O. Box 1275  
Nampa, Idaho 83653  
Facsimile: (208) 466-1981

  
\_\_\_\_\_  
Paul J. Stark

**FILED**  
A.M. 5:00 P.M.

AUG 16 2013

CANYON COUNTY CLERK  
S BROWN, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

NAMPA EDUCATION ASSOCIATION,	)	CASE NO. CV-2013-2962-C
	)	
Petitioner,	)	
	)	ORDER ON SUMMARY JUDGMENT
vs.	)	
	)	
NAMPA SCHOOL DISTRICT NO. 131,	)	
	)	
Respondent.	)	
_____	)	

**I. Factual Background**

This case involves no genuine issue of material fact<sup>1</sup>; instead, the issue is a legal one. The case arises as a result of the financial difficulties the Nampa School District faced in the fall of 2012. Earlier that year, the Nampa Education Association (NEA) and the local Board of Trustees attempted to negotiate the terms of the master employment

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<sup>1</sup> Petitioners alleged a material fact – that the teachers were pressured or coerced into signing the addendum contracts. However, as held below, the Court has stricken the portions of the affidavit that provide the factual support for those allegations for hearsay reasons. As such, there is no longer any factual allegation regarding the voluntariness of the contract, nor is a review of the voluntariness issue necessary to determine whether the addendum contract is illegal on the grounds articulated by the parties.

contracts for the teachers of the Nampa School District. Contract negotiations were unsuccessful and as a result, no master contract was formalized and the contract salary amount in the Continuing Teachers Contract reflected the "last best offer" of the district. The Continuing Teachers Contracts (Contract) complied with the State Board of Education requirements in all respects and the teachers began teaching pursuant to those contracts in the Fall of 2012.

Thereafter, the Nampa School District faced significant budget shortfalls. The Nampa School District Superintendent, through the District's human resource officer, drafted an Addendum to Continuing Teacher Contract (Addendum). Neither the local Board of Trustees nor the Nampa Education Association (NEA) negotiated the terms of this Addendum. The parties agree, although for different reasons, that the Addendum Contract does not comply with I.C. § 33-513. The Addendum requests each individual teacher donate one to four furlough days for which the teacher would not receive any compensation but the accrual or availability of benefits would not be affected. These Addendum Contracts were presented to the teachers through meetings at the various schools through the school district human resource officer. The Addendum states that any contribution of furlough days is voluntary on the part of the teacher. Some, although it is not clear how many or what percentage, of the teachers agreed to furlough various numbers of days. After signing the initial Addendum Contract, some teachers increased or decreased the number of days they had initially agreed to furlough.

The NEA, the Petitioner in this case, then sent two separate letters to the Nampa School District Superintendent, advising him that from the Petitioner's perspective, these contracts were illegal because: 1) the contracts amount to illegal direct dealing

between the district and the individual teachers; 2) the Petitioner, not individual teachers, was the negotiating body for the teachers; and, 3) the contracts were not on a form approved by the State Board of Education, in violation of Idaho Code § 33-513(1).<sup>2</sup> The district did not respond and thereafter, the contracts were executed and the furlough days were completed. At the time Petitioner instituted the above-entitled action asking this Court to declare the contracts illegal as a matter of law, the Addendum Contracts had been fully executed and the furlough days had already been applied.

Both parties filed motions for summary judgment. The Plaintiff's motion included the affidavit of Mandy Simpson, the president of the NEA at the time the Continuing Teacher Contracts and Addendum Contracts were executed. The Respondent has objected to various paragraphs of Ms. Simpson's Affidavit on hearsay grounds.

## **II. Motion to Strike**

Idaho Rule of Civil Procedure 56(e) provides in pertinent part: "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." These requirements "are not satisfied by an affidavit that is conclusory, based on hearsay, and not supported by personal

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<sup>2</sup> Of note, two different sets of statutes are applicable in this case. At the time the Continuing Teachers Contracts were executed, the "Students Come First" legislation was in effect. However, following the election in November 2012, those sections of the law were repealed by the voters and formalized by the Governor on November 8, 2012. Consequently, the Addendum Contract is governed by different law than the Continuing Teacher Contract, although the change in the law does not affect the outcome of the case.

knowledge.” *Posey v. Ford Motor Credit Co.*, 141 Idaho 477, 483, 111 P.3d 162, 168 (Ct. App. 2005)(citing *State v. Shama Res. Ltd. P'ship*, 127 Idaho 267, 271, 899 P.2d 977, 981 (1995)). Further, when considering evidence presented in support of or opposition to a motion for summary judgment, a court can only consider material which would be admissible at trial. *Gem State Ins. Co. v. Hutchison*, 145 Idaho 10, 14, 175 P.3d 172, 176 (2007)(citing *Petricevich v. Salmon River Canal, Co.*, 92 Idaho 865, 869, 452 P.2d 362, 366 (1969)). Thus, if the admissibility of evidence presented in support of a motion for summary judgment is raised by objection by one of the parties, the court must first make a threshold determination as to the admissibility of the evidence “before proceeding to the ultimate issue, whether summary judgment is appropriate.” *Id.* at 14, 176 (citations omitted).

In this case, the objectionable portions of Ms. Simpson’s affidavit are:

Paragraph 2: The Nampa Education Association was duly chosen as the representative organization of the teachers within the Nampa School District for the 2013-2013 school year.

Paragraph 3: The Nampa Education Association was recognized by the Nampa School District as the representative organization of the teachers within the Nampa School District for the 2012-2013 school year.

Paragraph 4: the Nampa Education Association has been duly chosen and recognized as the representative organization of the teachers within the Nampa School District for the past several decades.

Paragraph 7: On or about the week of December 10, 2012, the Nampa School District began pressuring teachers to sign an addendum contract by requiring teachers

to attend mandatory “emergency” meetings where the addendum contract was presented.

Paragraph 8: Attached as Exhibit “B” and incorporated by this reference is a true and correct copy of the form addendum contract (for both continuing and category A contracts).

Paragraph 9: Many teachers were told that the addendum contracts had to be signed and returned within a matter of a few days (December 17<sup>th</sup>).

Paragraph 10: Many teachers felt pressured to sign the addendum contracts by the Nampa School District and did not consider it voluntary. These teachers expressed fear of retaliation should then not sign the addendum contracts or if they were to publically [sic] state that the contracts were not voluntarily signed.

Paragraph 13: During the week of December 10, 2012, where teachers were being pressured to sign the addendum contracts, I directed legal counsel to draft a letter to the Nampa School District Explaining the situation.

Paragraph 14: Attached as Exhibit “C” and incorporated by this reference is a true and correct copy of a December 14, 2012 letter from Paul Stark to Dr. Thomas Michaelson, Superintendent of the Nampa School District.

Paragraph 15<sup>3</sup>: As the high pressure tactics continued, I again directed legal counsel to draft a second letter to the Nampa School District to explain the situation.

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<sup>3</sup> The Court asked why the Respondent did not object to the first phrase of Paragraph 15 given its other objections. The Respondent indicated it did also object to the beginning phrase of Paragraph 15.

Paragraphs 2, 3, 4, and 8

Paragraphs 2, 3, 4, 8 and 14 are all offered for the truth of the matter asserted – that NEA was, and has been for some time, the exclusive negotiating entity for the teachers in the Nampa School District. The Affiant, Ms. Simpson, does not provide a factual basis for how she knows this information – whether she has that knowledge as a result of her status as the President of the Association or whether she gleaned that information from conversations with others. Regardless, the parties all agreed to these facts at oral argument so any objection is mooted by the Respondent's subsequent acceptance and acknowledgement of these facts. Similarly, although the Addendum Contract would be hearsay for which no exception has been offered, all of the parties agree that the Addendum Contract submitted is a true and accurate copy, and both parties have submitted the document and asked the Court to consider it, as it is the subject matter of the underlying action.

As such, the Court will not strike Paragraphs 2, 3, 4, and 8 of Ms. Simpson's affidavit.

Paragraph 7, 9, 10, 13, and 15

Paragraphs 7, 9, 10 and the first phrase of Paragraphs 13 and 15 are hearsay for which no exception has been offered. While Ms. Simpson indicates she has "personal knowledge" of the facts, it is not clear how she obtained that knowledge and therefore, Plaintiff's have not established sufficient foundation establishing that information as admissible evidence. As such, paragraphs, 7, 9, 10, the portion of paragraph 13, being with the word "During" and ending with the word "contracts," and the first phrase of



paragraph 15 will be stricken from the affidavit and will not be considered by this Court for purposes of the Motions for Summary Judgment.

Paragraph 14

Finally, the fact of sending of the letter as outlined in Paragraph 14 is not hearsay, and the Court will consider that the letter was sent. The contents of the letter, without adequate foundation, are hearsay. Ms. Simpson has not provided any information in her affidavit about how she knows this letter is the same as the letter sent to the district, therefore, there is insufficient foundation to consider the letter except as hearsay and thus, the Court will grant the Respondent's motion and will strike that Portion of Paragraph 15 that relates to the content of Exhibit C.

**III. Justiciability**

A. Standing

Respondent argues that Plaintiff has not established standing and that the issue is moot since the contracts have been fully executed. While an association may have standing in its own right, it must establish an injury to itself to justify any relief. *Glengary-Gamlin Protective Ass'n, Inc. v. Bird*, 106 Idaho 84, 87, 675 P.2d 344, 347 (Ct. App. 1983). (Ct. App. 1983) citing *Warth v. Seldin*, 422 U.S. 490, 515, 95 S.Ct. 2197, 2213 (1975).

The three most basic propositions of the doctrine of standing that our Court uses to guide its decisions were outlined in *Boundary Backpackers v. Boundary County* as being (1) that standing "focuses on the party seeking relief and not on the issues the party wishes to have adjudicated;" (2) that in order "to satisfy the case or controversy requirement of standing, litigants generally must allege or demonstrate an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury;" and (3) that "a citizen and taxpayer may not

challenge a governmental enactment where the injury is one suffered alike by all citizens and taxpayers of the jurisdiction.”

128 Idaho 371, 375, 913 P.2d 1141, 1145 (1996) (quoting *Miles v. Idaho Power Co.*, 116 Idaho 635, 641, 778 P.2d 757, 763 (1989)). Standing may be predicated upon either a threatened harm or a past injury. *In re Jerome Cnty. Bd. of Comm'rs*, 153 Idaho 298, 308, 281 P.3d 1076, 1086 (2012) citing *Schneider v. Howe*, 142 Idaho 767, 772, 133 P.3d 1232, 1237 (2006). “There is no question that an association may have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy. *Bear Lake Educ. Ass'n, By & through Belnap v. Bd. of Trustees of Bear Lake Sch. Dist. No. 33*, 116 Idaho 443, 448, 776 P.2d 452, 457 (1989).

The only injury alleged in the Petition is that the Addendum was not on a form approved by the State Board of Education. The Memoranda, both in opposition to the Respondent's Motion for Summary Judgment, and in Support of the Plaintiff's Motion for Summary Judgment, reference Idaho Code § 33-513(1) and the public policy reasons that such an Addendum is, in essence, part of the contract for employment.

In order to establish standing based on a statutory violation, the Petitioner must show “a direct nexus between the vindication of [its] interest and the enforcement of the [statute],” *Linda R.S. v. Richard D.*, 410 U.S. 614, 619, 93 S. Ct. 1146, 1149, 35 L. Ed. 2d 536 (1973), in order to insure that “the relief requested would redress appellant's claimed injury.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 203, 120 S. Ct. 693, 716, 145 L. Ed. 2d 610 (U.S.S.C. 2000).

In this case, the association has asserted as injury the District's failure to comply with Idaho Code § 33-513. At the time the Continuing Teacher Contracts and the

Addendum were executed, the Petitioner was “the sole representative of the teacher employees of the District and is the medium through which individual teachers collectively seek to reach first a negotiation agreement and later a Master Agreement with the Board of Trustees of [Nampa] School District.” *Bear Lake Educ. Ass’n, By & through Belnap v. Bd. of Trustees of Bear Lake Sch. Dist. No. 33*, 116 Idaho 443, 448, 776 P.2d 452, 457 (1989). Although a Master Contract was never formalized, the negotiation of wage or compensation contracts, and insistence that local boards comply with §33-513, is still within the exclusive province of the Petitioner and therefore, a contract purporting to affect wage and compensation would be injurious to Petitioner if it was not properly negotiated. As such, Petitioner has an interest in ensuring that contracts entered into between the teachers and the local board comply with statutory requirements. In this case, a declaration that the Addendum Contract is illegal would adequately redress Petitioner’s injury – that the contract fails to comply with I.C. § 33-513. As such, the Petitioners have established standing in this case.<sup>4</sup>

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<sup>4</sup> In order to establish standing on behalf of its members, the Organization must establish all three of the following elements: “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit.” *Id.* at 88, 675 P.2d at 348. When an association seeks standing for its members, the association must allege that at least one of its members face injury and could meet the requirements of standing on an individual basis. *In re Jerome Cnty. Bd. of Comm’rs*, 153 Idaho 298, 308, 281 P.3d 1076, 1086 (2012), citing *Selkirk–Priest Basin Ass’n, Inc. v. State ex rel. Andrus*, 127 Idaho 239, 241–42, 899 P.2d 949, 951–52 (1995). “As the record does not include any indication that Friends of Minidoka had a member who was an affected party suffering potential harm to real estate in the area surrounding the proposed LCO site, Friends of Minidoka cannot meet the first requirement for associational standing—no member has standing to sue in their own right.” *Id.* at 298, 281 P.3d at 1088.

Plaintiff has not alleged sufficient facts to assert standing on behalf of its individual members. Unlike the organizations in *In re Jerome County Bd. of Com’rs*, in this case, there is nothing in the Record that lists or otherwise indicates the membership

## B. Mootness

The Respondent argues that the issue in this case is moot because the contracts have been fully executed and therefore, no relief is available. Petitioners argue that the relief requested can be granted through the declaration and thus, the issue is not moot.

The general rule of mootness doctrine is that, to be justiciable, an issue must present a real and substantial controversy that is capable of being concluded through a judicial decree of specific relief. *Idaho Sch. for Equal Educ. Opportunity v. Idaho State Bd. of Educ.*, 128 Idaho 276, 281-82, 912 P.2d 644, 649-50 (1996).

Furthermore, the controversy must be live at the time of the court's hearing. *Id.* at 282, 912 P.2d at 650. If, however, the issues presented are no longer live and if the parties lack a legally cognizable interest in the outcome, those issues are not justiciable, but are moot and thereby preclude review. *Id.* at 281, 912 P.2d at 649. A party lacks a legally cognizable interest in the outcome when even a favorable judicial decision would not result in relief. See *Murphy v. Hunt*, 455 U.S. 478, 481-82, 102 S.Ct. 1181, 1183, 71 L.Ed.2d 353, 356-57 (1982). *Freeman v. Idaho Dep't of Correction*, 138 Idaho 872, 875, 71 P.3d 471, 474 (Ct. App. 2003).

"An action for declaratory judgment is moot where the judgment, if granted, would have no effect either directly or collaterally on the plaintiff, the plaintiff would be unable to obtain further relief based on the judgment and no other relief is sought in the action." *Idaho Sch. for Equal Educ. Opportunity By & Through Eikum v. Idaho State Bd.*

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of the Plaintiff organization included any one of the teachers who signed the Addendum Contract. If the Petitioner had alleged and supported by facts that any one of its members signed the Addendum Contract, then it would have met the first prong of the test. However, failing to specifically allege that an identified member of the association has suffered, or will suffer, an injury deprives the Plaintiff organization of standing on this basis.

of *Educ. By & Through Mossman*, 128 Idaho 276, 282, 912 P.2d 644, 650 (1996), citing 22A Am.Jur.2d *Declaratory Judgments* § 41 (1988). The existence of the required elements for declaratory relief, including the existence of a “controversy,” should be determined as of the time of the court’s trial or hearing, rather than at the commencement of the action. See, e.g., *Golden v. Zwickler*, 394 U.S. 103, 108, 89 S.Ct. 956, 959, 22 L.Ed.2d 113 (1969).”

In this case, Petitioner has not asked for any relief except to have the contracts declared illegal. However, if the relief asked for is granted, that declaration would have an effect – either directly or collaterally – as Petitioner can thereafter use the declaration, if granted, to prevent future types of contracts. Additionally, if the Addendum Contract is determined to be illegal, Petitioner could seek further relief on behalf of its members. As such, although the contracts have been fully executed, the issue is not moot.

#### **IV. Motion for Summary Judgment**

Under I.R.C.P. 56(c), the Plaintiff shall be entitled to summary judgment if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Doe v. Durtschi*, 110 Idaho 466, 716 P.2d 1238 (1986). In determining whether an issue of material fact exists, all disputed facts are liberally construed and all reasonable inferences made in favor of the non-moving party. *G&M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 808 P/2d 851 (1991). If the record contains conflicting inferences upon which reasonable minds could differ, summary

judgment should not be granted. *Sewell v. Neilson Monroe, Inc.*, 109 Idaho 192, 706 P.2d 81 (Ct.App.1985). This requirement is a strict one. *Clarke v Prenger*, 114 Idaho 766, 760 P.2d 1182 (1988). The burden of proving the absence of a material fact rests at all times upon the moving party. *G&M Farms v Funk*, supra. This burden is onerous because even "circumstantial evidence can create a genuine issue of material fact." *Doe v Durtschi*, 110 Idaho 466, 716 P.2d 1238 (1986).

Once the moving party establishes the absence of a genuine issue, the burden shifts to the nonmoving party to show that a genuine issue of material fact on the challenged element of their claim does exist. Idaho R. Civ. P. 56(e); *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 865 (2007); *Navarrete v. City of Caldwell*, 130 Idaho 849, 949 P.2d 597 (Ct.App.1997). The opposing party's case must not rest on mere speculation because a mere scintilla of evidence is not enough to create a genuine issue of fact. *G&M Farms v. Funk Irrigation Co.*, supra; *Callies v. O'Neal*, 147 Idaho 841, 846, 216 P.3d 130, 135 (2009). If the Plaintiff fails to submit evidence to establish an essential element of his claim, summary judgment is appropriate. *Post Falls Trailer Park v. Fredekind*, 131 Idaho 634, 962 P.2d 1018 (1998). Moreover, a party against whom a motion for summary judgment is sought may not merely rest on allegations contained in his pleadings, but must come forward and produce evidence by way of deposition or affidavit to contradict the assertions of the moving party and establish a genuine issue of material fact. *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 941 P.2d 314 (1997); See also I.R.C.P. 56(c). Failure to do so will result in an order granting summary judgment. The district court is not required to search the record for evidence of an issue of material fact; it is the nonmoving party's burden to bring that evidence to

the court's attention. *Vreeken v. Lockwood, Eng'g, B.V.*, 148 Idaho 89, 103-04, 218 P.3d 1150, 1164-65 (2009). Failure to do so will result in an order granting summary judgment. *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 941 P.2d 314 (1997).

The fact that both parties file motions for summary judgment does not necessarily mean that there are no genuine issues of material fact. *Moss v. Mid-Am. Fire & Marine Ins. Co.*, 103 Idaho 298, 302, 647 P.2d 754, 758 (1982). Moreover, the filing of cross-motions for summary judgment does not transform "the court, sitting to hear a summary judgment motion, into the trier of fact." *Id.* When cross-motions have been filed and the action will be tried before the court without a jury, however, the court may, in ruling on the motions for summary judgment, draw probable inferences arising from the undisputed evidentiary facts. *Riverside Dev. Co. v. Ritchie*, 103 Idaho 515, 519, 650 P.2d 657, 661 (1982); see also *Drew v. Sorensen*, 133 Idaho 534, 537, 989 P.2d 276, 279 (1999). Drawing probable inferences under such circumstances is permissible since the court, as the trier of fact, would be responsible for resolving conflicting inferences at trial. *Ritchie*, 103 Idaho at 519, 650 P.2d at 661. Conflicting evidentiary facts, however, must still be viewed in favor of the nonmoving party. *Argyle v. Slemaker*, 107 Idaho 668, 670, 691 P.2d 1283, 1285 (Ct.App.1984).

*Banner Life Ins. Co. v. Mark Wallace Dixon Irrevocable Trust*, 147 Idaho 117, 123-24, 206 P.3d 481, 487-88 (2009). When both parties file a motion for summary judgment relying upon the same facts, issues, and theories, the parties essentially stipulate that there is no genuine issue of material fact which would preclude the district court from entering summary judgment. *Brown v. Perkins*, 129 Idaho 189, 191, 923 P.2d 434, 436 (1996). *Hunting v. Clark Cnty. Sch. Dist. No. 161*, 129 Idaho 634, 637, 931 P.2d 628, 631 (1997).

At issue in this case is whether the Addendum Contract is a contract pursuant to I.C. § 33-513(1), which provides in pertinent part:

The board of trustees of each school district, including any specially chartered district, shall have the following powers and duties:

1. To employ professional personnel, on written contract in form approved by the state superintendent of public instruction.

Petitioners assert that this contract was an employment contract, but that it was not on an approved form as required by statute and therefore, was an illegal contract. Respondents argue that it was not an employment contract and therefore, was not required to be on any approved form and, consequently, is perfectly legal. Both parties agree that the Continuing Teachers Contract complied with Idaho Code § 33-513 and that the Addendum Contract was an "Addendum to Continuing Teacher Contract."

Whether a contract is illegal is a question of law for the court to determine from all the facts and circumstances of each case. *Trees v. Kersey*, 138 Idaho 3, 6, 56 P.3d 765, 768 (2002). The illegality of a contract can be raised at any stage in litigation. *Id.* In fact, the court has the duty to raise the issue of illegality *sua sponte*. *Id.* Whether a contract violates a statute is a question of statutory interpretation and is a matter of law for the Court to determine from all the facts and circumstances of each case. *Id.*

Statutory interpretation begins with the literal language of the statute. *Paolini v. Albertson's, Inc.*, 143 Idaho 547, 549, 149 P.3d 822, 824 (2006). The statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings. *Id.* When the statutory language is unambiguous, the plain meaning of the statute must be given effect, and the court need not consider rules of statutory construction. *Payette River Prop. Owners Ass'n v. Bd. of Comm'rs of Valley County*, 132 Idaho 551, 557, 976 P.2d 477, 483 (1999). It should be noted that the court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. *AmeriTel Inns, Inc. v. Pocatello-Chubbuck Auditorium Dist.*, 146 Idaho 202, 204, 192 P.3d 1026, 1028 (2008).

*Wernecke v. St. Maries Joint Sch. Dist. No. 401*, 147 Idaho 277, 282, 207 P.3d 1008, 1013 (2009).



A contract made for the purpose of furthering any matter prohibited by statute is illegal, unenforceable, and void. *Kunz v. Lobo Lodge, Inc.*, 133 Idaho 608, 611, 990 P.2d 1219, 1222 (Ct.App.1999) (citing *Porter v. Canyon County Farmers' Mut. Fire Ins. Co.*, 45 Idaho 522, 525, 263 P. 632, 633 (1928)). When a court is faced with an illegal contract, it denies enforcement of the contract. *Trees*, 138 Idaho at 9, 56 P.3d at 771.

According to Black's Law Dictionary: addendum is "a thing that is added." To employ means "to engage in one's service; to hire." To hire "implies a request and a contract for compensation."

In this case, Respondent's conceded at oral argument that the Addendum Contract was part of the employment contract and it attempted to, and in fact, did, modify the Contract by reducing the amount of compensation agreed upon in the Contract. Employment contracts are required to be on a form approved by the state superintendent of public instruction pursuant to I.C. § 33-513. This Addendum purported to reduce the compensation afforded to the teachers and to remove the protections of I.C. § 33-513 without any indication that it did so in a form approved by either the State Superintendent of Public Instruction or the State Board of Education. Therefore, the Addendum Contract is ineffective at altering the terms of the Continuing Teacher Salaries and is void.

On a separate ground, this Court finds the Addendum Contract is illegal because it failed to comply with Idaho Code §§ 33-1272 and -1273. Various Idaho Code sections are relevant to this analysis:

I.C. § 33-1272(3) provides in pertinent part:

negotiations means meeting and conferring ...by the local board of trustees and the authorized local education organization or the respective

designated representatives of both parties for the purpose of reaching an agreement upon matters and conditions subject to negotiations as specified in a negotiation agreement between said parties.

Section 33-1272(1) defines a professional employee as a "certificated employee," which includes teachers and I.C. § 33-1273(1) requires that:

"the local education organization selected by a majority of the qualifying professional employees shall be the exclusive representative for all professional employees in the district for purposes of negotiations. A local board of trustees or its designated representative shall negotiate matters covered by a negotiations agreement only with the local education organization or its designated representative.

Finally, Idaho Admin. Code r. 08.02.01.150: states, "The State Superintendent of Public Instruction has approved a standard employment contract form. Any deviation from this contract form must be approved by the State Superintendent of Public Instruction and reviewed for reapproval once every three (3) years. (Section 33-513, Idaho Code) (4-1-97).

There is a complex set of statutory provisions governing the process by which teachers' salaries, benefits and employment conditions are negotiated. "...[T]he procedures set forth in I.C. §§ 33-1271 to -1276 reflect the legislature's determination that structured negotiation procedures would benefit not only school districts and teachers, but the public as well. *Gilbert v. Nampa Sch. Dist. No. 131*, 104 Idaho 137, 147, 657 P.2d 1, 11 (1983).

At oral argument, both parties agreed that the number of working days and the commensurate salary are issues usually negotiated by the local board and the education association. Here there was an agreement apparently between the school superintendent human resource officer and individual teachers. The school superintendent, individually or through the human resource officer, did not have the

statutory authority to negotiate a reduced salary or wages unless he was designated by the local board of trustees but even so, the designee of the local board can *only* negotiate matters covered by the negotiation agreement with the local education organization or its designee.

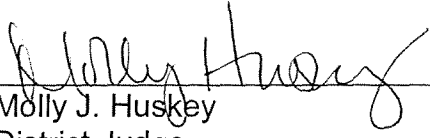
Here, the school superintendent, in presenting individual teachers with a variety of days, and allowing teachers to select a specific number of days to furlough and then to subsequently modify the number of agreed-upon furlough days, was negotiating with individual teachers regarding the compensation each teacher would forego based on the number of days the teacher agreed to furlough. This negotiation is specifically precluded under the statute. Moreover, the superintendent is deemed to know that the individual teachers had no authority to negotiate in this fashion and thus, he superintendent had no justifiable reason to believe the individual teachers had the authority to enter into contracts that altered their wage or compensation when such contract was negotiated outside the statutory process. *Brown v. Caldwell Sch. Dist. No. 132*, 127 Idaho 112, 117-118, 898 P.2d 43, 48049 (1995).

Because the individual teachers entering the contracts did not have the authority to contract for reduced wages or compensation when such reduction was negotiated outside the statutory procedure, there was a lack of authority to contract, rendering the Addendum Contracts void. 146 Idaho 527 (2008) citing *Woodward v. City of Grangeville*, 13 Idaho 652 (1907).

As such, because the Addendum Contracts do not comply with I.C. §§ 33-513 or 33-1272 and -1273, this Court finds the Addendum Contracts are unenforceable and therefore, grants Petitioner's motion for summary judgment.

THEREFORE, IT IS HEREBY ORDERED, that Petitioner's Motion for Summary Judgment is GRANTED and Respondent's Motion for Summary Judgment is DENIED.

Dated: August 16, 2013.

  
Molly J. Huskey  
District Judge

**CLERK'S CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this AUG 16 2013 day of August, 2013, I caused to be served a true and correct copy of the foregoing **ORDER ON SUMMARY JUDGMENT** by the method indicated below, and addressed to the following persons:

Paul J. Stark  
Idaho Education Association  
620 N 6th St.  
P.O. Box 2638  
Boise, ID 83702

☒ U.S. Mail  
☐ Hand Delivered  
☐ Facsimile  
☐ Overnight Mail  
☐ E-Mail

William F. (Bud) Yost  
Chip Giles  
Yost Law, PLLC  
4 Ogden Ave  
PO Box 1275  
Nampa, ID 83653

☒ U.S. Mail  
☐ Hand Delivered  
☐ Facsimile  
☐ Overnight Mail  
☐ E-Mail

CLERK OF THE DISTRICT COURT

By:   
Deputy Clerk

William F. Yost, ISB No. 1242  
Chip Giles, ISB No. 9135  
YOST LAW, PLLC  
4 Ogden Avenue  
PO Box 1275  
Nampa, ID 83653  
Telephone: 208-466-9222  
Facsimile: 208-466-1981  
Email: [bud@wyostlaw.com](mailto:bud@wyostlaw.com)  
[chip@wyostlaw.com](mailto:chip@wyostlaw.com)  
Attorneys for Respondent-Appellant

**FILED**  
11:55 A.M. P.M.

**SEP 27 2013**

**CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY**

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

NAMPA EDUCATION ASSOCIATION,	)	
	)	<b>Case No. CV 2013-2962-C</b>
Petitioner-Respondent,	)	
	)	<b>NOTICE OF APPEAL</b>
vs.	)	
	)	
NAMPA SCHOOL DISTRICT NO. 131,	)	Filing Fee Category: L4
	)	Filing Fee: \$109.00
Respondent-Appellant.	)	
	)	

**TO: THE ABOVE-NAMED RESPONDENT, NAMPA EDUCATION ASSOCIATION,  
AND ITS ATTORNEY OF RECORD, PAUL J. STARK; AND  
THE CLERK OF THE ABOVE ENTITLED COURT**

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, NAMPA SCHOOL DISTRICT NO. 131, appeals against the above-named Respondent, NAMPA EDUCATION ASSOCIATION, to the Idaho Supreme Court from the Order on Summary Judgment entered on the 16<sup>th</sup> day of August, 2013, the Honorable Molly J. Huskey presiding.

2. Appellant has the right to appeal to the Idaho Supreme Court, and the Order described in paragraph 1 is appealable, pursuant to Idaho Appellate Rule 11(a)(1). *See Goodman Oil Co. v. Scotty's Duro-Bilt Generator, Inc.* 148 Idaho 588, 591, 226 P.3d 530, 533 (2010).

3. In the event the Idaho Supreme Court finds the Order is not appealable pursuant to Idaho Appellate Rule 11(a)(1), Appellant requests, pursuant to Idaho Appellate Rule 17(2), that this appeal becomes valid upon the filing and placing of the stamp of the Clerk of the Court on such appealable judgment or order, without re-filing this Notice of Appeal.

4. Appellant intends to assert a number of issues, including but not limited to the following:

a. Did the District Court err in finding that the negotiation of wages or compensation and the compliance with Idaho Code Section 33-513 was within the specific purview of the Nampa Education Association ("NEA"), notwithstanding the fact that there was no master agreement existing between the NEA and Nampa School District No. 131 ("Nampa")?

b. Did the District Court err in finding that a contract purporting to affect wage and compensation, if not properly negotiated, would be injurious to the NEA?

c. Did the District Court err in finding that the NEA had an interest in ensuring that all voluntary addendum contracts entered into between teachers and local school boards comply with Idaho Section 33-513?

d. Did the District Court err in finding that a declaration determining the voluntary addendum contracts were illegal would adequately redress any injury suffered by the NEA?

e. Did the District Court err in finding that a declaration determining the voluntary addendum contracts were illegal would have an effect, either directly or collaterally, as the NEA could prevent future use of such contracts?

f. Did the District Court err in finding that a declaration determining the voluntary addendum contracts were illegal would allow the NEA to seek further relief on behalf of its members?

g. Did the District Court err in finding that the NEA had standing to bring a petition for summary judgment?

h. Did the District Court err in finding that the full performance of the voluntary addendum contracts did not render the matter moot?

i. Did the District Court err in finding that the voluntary addendum contracts were void as a matter of law for failure to comply with Idaho Code Section 33-513?

j. Did the District Court err in finding that the voluntary addendum contracts were ineffective at altering the terms of continuing salaries (continuing contract salaries) and, therefore, were void?

k. Did the District Court err in finding that Nampa, in requesting teachers to volunteer furlough days, was “negotiating” with individual teachers and such action was precluded by statute?

l. Did the District Court err in finding the voluntary addendum contracts to be illegal for failure to comply with Idaho Code Section 33-1272, *et seq.*?

m. Did the District Court err in finding that the Superintendent of Nampa was deemed to have knowledge that individual teachers had no authority to volunteer furlough days for the benefit of Nampa?

n. Did the District Court err in finding that individual teachers had no authority to volunteer furlough days, and, therefore, the voluntary addendum contracts were void as a matter of law?

5. Appellant requests the reporter's standard transcript from the hearing on Appellant's Motion for Summary Judgment and Respondent's cross-Motion for Summary Judgment held on August 1, 2013.

6. Appellant requests the following documents to be included in the Clerk's record, in addition to those automatically included under Idaho Appellate Rule 28:

a. Appellant's Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment;

b. Affidavit of Steve Kipp in Support of Appellant's Motion for Summary Judgment;

c. Respondent's Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment;

d. Affidavit of Mandy Simpson in Support of Respondent's Motion for Summary Judgment;

e. Appellant's Reply Memorandum to Respondent's Motion for Summary Judgment;

f. Respondent's Memorandum in Opposition to Appellant's Motion for Summary Judgment;

g. Appellant's Reply to Respondent's Memorandum in Opposition to Appellant's Motion for Summary Judgment;

h. Respondent's Reply Memorandum in Support of Respondent's Motion for Summary Judgment.



7. No order has been entered sealing all or any portion of the record.

8. No additional charts or pictures offered or admitted as exhibits are requested in this appeal.

9. It is certified:

a. That a copy of this Notice of Appeal has been served on the court reporter,  
Laura Whiting, at the following address:

Laura Whiting, Court Reporter  
Canyon County Courthouse  
1115 Albany Street  
Caldwell, ID 83605

b. That the Clerk of the District Court has been paid the estimated fee of \$200.00 for preparation of the reporter's transcript, subject to adjustments or receipt from the Clerk's office of an estimate of cost;

c. That the estimated fee for the preparation of the Clerk's record in the amount of \$100.00 has been paid, subject to adjustment or receipt from the Clerk's office of an estimate of cost;

d. That the appellate filing fee of \$109.00 has been paid;

e. That service has been made upon all parties required to be served pursuant to Idaho Appellate Rule 20.

DATED this 27<sup>th</sup> day of September, 2013.

YOST LAW, PLLC

By: \_\_\_\_\_

  
Chip Giles  
Attorneys for Respondent-Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of September, 2013, I caused to be served by the method indicated below a true and correct copy of the foregoing document upon:

Paul J. Stark Idaho Education Association 620 North 6 <sup>th</sup> St PO Box 2638 Boise, ID 83701	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Facsimile No. 344-1606
Laura Whiting, Court Reporter Canyon County Courthouse 1115 Albany Street Caldwell, ID 83605	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Facsimile No. 454-7525

  
\_\_\_\_\_  
Chip Giles

# In the Supreme Court of the State of Idaho

8:30 A.M. FILED P.M.

OCT 09 2013

CANYON COUNTY CLERK  
T RANDALL, DEPUTY

NAMPA EDUCATION ASSOCIATION,	)	
	)	
Petitioner-Respondent,	)	ORDER REMANDING TO DISTRICT
	)	COURT
v.	)	
	)	Supreme Court Docket No. 41454-2013
NAMPA SCHOOL DISTRICT NO. 131,	)	Canyon County No. 2013-2962
	)	
Respondent-Appellant.	)	

This appeal is from the ORDER ON SUMMARY JUDGMENT file stamped in the District Court on August 16, 2013. It appears that a Judgment as required by Idaho Rules of Civil Procedure 54(a) has yet to be entered. Therefore,

IT HEREBY IS ORDERED that pursuant to Idaho Appellate Rules 11(a), 13.3, and 17(c)(2), the above-entitled matter be, and hereby is, REMANDED TO THE DISTRICT COURT and proceedings in this appeal shall be SUSPENDED to allow for the entry of a FINAL JUDGMENT. Upon entry of the FINAL JUDGMENT by the District Court, the District Court Clerk is directed to transmit a certified copy of the FINAL JUDGMENT to this Court, at which time this appeal shall proceed accordingly.

DATED this 7<sup>th</sup> day of October, 2013.

For the Supreme Court

Stephen W. Kenyon  
Stephen W. Kenyon, Clerk

cc: Counsel of Record  
District Court Clerk  
District Court Reporter  
District Court Judge

ORDER REMANDING TO DISTRICT COURT – Docket No. 41454-2013

F I L E D  
A.M. 2:00 P.M.

OCT 17 2013

CANYON COUNTY CLERK  
C. DYE, DEPUTY

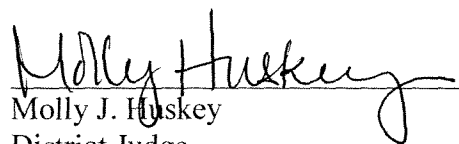
IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

NAMPA EDUCATION ASSOCIATION,	)	
	)	CASE NO. CV-2013-2962
Petitioner,	)	
vs.	)	
	)	
	)	FINAL JUDGMENT
NAMPA SCHOOL DISTRICT NO. 131,	)	
	)	
Respondent.	)	
_____	)	

Pursuant to the Order on Summary Judgment issued on August 16, 2013:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of Petitioner, which is granted the declaratory relief that the Addendum Contracts are determined to be unlawful and unenforceable.

Dated this 15<sup>th</sup> day of October, 2013.

  
Molly J. Huskey  
District Judge

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was forwarded  
to the following persons on this 17<sup>th</sup> day of October, 2013:

Paul J. Stark  
Idaho Education Association  
620 N. 6<sup>th</sup> Street  
Boise, ID 83702

William F. Yost  
Chip Giles  
Yost Law, PLLC  
4 Ogden Ave.  
Nampa, ID 83653

  
\_\_\_\_\_  
Deputy Clerk

FILED  
9/15 A.M. P.M.

NOV 01 2013

CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY

William F. Yost, ISB No. 1242  
 Chip Giles, ISB No. 9135  
 YOST LAW, PLLC  
 4 Ogden Avenue  
 PO Box 1275  
 Nampa, ID 83653  
 Telephone: 208-466-9222  
 Facsimile: 208-466-1981  
 Email: [bud@wyostlaw.com](mailto:bud@wyostlaw.com)  
[chip@wyostlaw.com](mailto:chip@wyostlaw.com)  
 Attorneys for Respondent-Appellant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

NAMPA EDUCATION ASSOCIATION,	)	
	)	Case No. CV 2013-2962-C
Petitioner-Respondent,	)	
	)	AMENDED NOTICE OF APPEAL
vs.	)	
	)	
NAMPA SCHOOL DISTRICT NO. 131,	)	
	)	
Respondent-Appellant.	)	
	)	

**TO: THE ABOVE-NAMED RESPONDENT, NAMPA EDUCATION ASSOCIATION,  
 AND ITS ATTORNEY OF RECORD, PAUL J. STARK; AND  
 THE CLERK OF THE ABOVE ENTITLED COURT**

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, NAMPA SCHOOL DISTRICT NO. 131, appeals against the above-named Respondent, NAMPA EDUCATION ASSOCIATION, to the Idaho Supreme Court from the Order on Summary Judgment entered on the 16<sup>th</sup> day of August, 2013, the Honorable Molly J. Huskey presiding.

AMENDED NOTICE OF APPEAL - 1

000127

2. Appellant has the right to appeal to the Idaho Supreme Court from the Final Judgment entered by the District Court on October 17, 2013, pursuant to Idaho Appellate Rule 11(a)(1), Appealable Judgments and Orders.

3. Appellant intends to assert a number of issues, including but not limited to the following:

a. Did the District Court err in finding that the negotiation of wages or compensation and the compliance with Idaho Code Section 33-513 was within the specific purview of the Nampa Education Association ("NEA"), notwithstanding the fact that there was no master agreement existing between the NEA and Nampa School District No. 131 ("Nampa")?

b. Did the District Court err in finding that a contract purporting to affect wage and compensation, if not properly negotiated, would be injurious to the NEA?

c. Did the District Court err in finding that the NEA had an interest in ensuring that all voluntary addendum contracts entered into between teachers and local school boards comply with Idaho Section 33-513?

d. Did the District Court err in finding that a declaration determining the voluntary addendum contracts were illegal would adequately redress any injury suffered by the NEA?

e. Did the District Court err in finding that a declaration determining the voluntary addendum contracts were illegal would have an effect, either directly or collaterally, as the NEA could prevent future use of such contracts?

f. Did the District Court err in finding that a declaration determining the voluntary addendum contracts were illegal would allow the NEA to seek further relief on behalf of its members?

g. Did the District Court err in finding that the NEA had standing to bring a petition for summary judgment?

h. Did the District Court err in finding that the full performance of the voluntary addendum contracts did not render the matter moot?

i. Did the District Court err in finding that the voluntary addendum contracts were void as a matter of law for failure to comply with Idaho Code Section 33-513?

j. Did the District Court err in finding that the voluntary addendum contracts were ineffective at altering the terms of continuing salaries (continuing contract salaries) and, therefore, were void?

k. Did the District Court err in finding that Nampa, in requesting teachers to volunteer furlough days, was "negotiating" with individual teachers and such action was precluded by statute?

l. Did the District Court err in finding the voluntary addendum contracts to be illegal for failure to comply with Idaho Code Section 33-1272, *et seq.*?

m. Did the District Court err in finding that the Superintendent of Nampa was deemed to have knowledge that individual teachers had no authority to volunteer furlough days for the benefit of Nampa?

n. Did the District Court err in finding that individual teachers had no authority to volunteer furlough days, and, therefore, the voluntary addendum contracts were void as a matter of law?

o. Did the District Court err in dismissing Appellant's Motion for Summary Judgment?



4. Appellant requests the reporter's standard transcript from the hearing on Appellant's Motion for Summary Judgment and Respondent's cross-Motion for Summary Judgment held on August 1, 2013.

5. Appellant requests the following documents to be included in the Clerk's record, in addition to those automatically included under Idaho Appellate Rule 28:

a. Appellant's Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment;

b. Affidavit of Steve Kipp in Support of Appellant's Motion for Summary Judgment;

c. Respondent's Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment;

d. Affidavit of Mandy Simpson in Support of Respondent's Motion for Summary Judgment;

e. Appellant's Reply Memorandum to Respondent's Motion for Summary Judgment;

f. Respondent's Memorandum in Opposition to Appellant's Motion for Summary Judgment;

g. Appellant's Reply to Respondent's Memorandum in Opposition to Appellant's Motion for Summary Judgment;

h. Respondent's Reply Memorandum in Support of Respondent's Motion for Summary Judgment.

6. No order has been entered sealing all or any portion of the record.

7. No additional charts or pictures offered or admitted as exhibits are requested in this appeal.

8. It is certified:

a. That a copy of this Amended Notice of Appeal has been served on the court reporter, Laura Whiting, at the following address:

Laura Whiting, Court Reporter  
Canyon County Courthouse  
1115 Albany Street  
Caldwell, ID 83605

b. That the Clerk of the District Court has been paid the estimated fee of \$290.00 for preparation of the reporter's transcript, subject to adjustments or receipt from the Clerk's office of an estimate of cost;

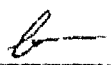
c. That the estimated fee for the preparation of the Clerk's record in the amount of \$100.00 has been paid, subject to adjustment or receipt from the Clerk's office of an estimate of cost;

d. That the appellate filing fee of \$109.00 has been paid;

e. That service has been made upon all parties required to be served pursuant to Idaho Appellate Rule 20.

DATED this 1<sup>st</sup> day of November, 2013.


YOST LAW, PLLC

By:   
Chip Giles  
Attorneys for Respondent-Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1<sup>st</sup> day of November, 2013, I caused to be served by the method indicated below a true and correct copy of the foregoing document upon:

Paul J. Stark Idaho Education Association 620 North 6 <sup>th</sup> St PO Box 2638 Boise, ID 83701	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Facsimile No. 344-1606
Laura Whiting, Court Reporter Canyon County Courthouse 1115 Albany Street Caldwell, ID 83605	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Facsimile No. 454-7525

  
\_\_\_\_\_  
Chip Giles

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

NAMPA EDUCATION ASSOCIATION,	)	
	)	
Petitioner-Respondent,	)	
	)	Case No. CV-13-02962*C
-vs-	)	
	)	CERTIFICATE OF EXHIBIT
NAMPA SCHOOL DISTRICT NO. 131,	)	
	)	
Respondent-Appellant.	)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of  
the State of Idaho, in and for the County of Canyon, do hereby certify that the following  
is being sent as an exhibit:

**NONE**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of  
the said Court at Caldwell, Idaho this 5 day of December, 2013.

CHRIS YAMAMOTO, Clerk of the District  
Court of the Third Judicial  
District of the State of Idaho,  
in and for the County of Canyon.

By:  Deputy

CERTIFICATE OF EXHIBIT

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

NAMPA EDUCATION ASSOCIATION,	)	
	)	
Petitioner-Respondent,	)	
	)	Case No. CV-13-02962*C
-vs-	)	
	)	CERTIFICATE OF CLERK
NAMPA SCHOOL DISTRICT NO. 131,	)	
	)	
Respondent-Appellant.	)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that the above and foregoing Record in the above entitled cause was compiled and bound under my direction as, and is a true, correct Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules and as requested in the Amended Notice of Appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 5 day of December, 2013.

CHRIS YAMAMOTO, Clerk of the District  
Court of the Third Judicial  
District of the State of Idaho,  
in and for the County of Canyon.

By:



Deputy

CERTIFICATE OF CLERK

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

NAMPA EDUCATION ASSOCIATION,	)	
	)	
Petitioner-Respondent,	)	
	)	Supreme Court No. 41454-2013
-vs-	)	
	)	CERTIFICATE OF SERVICE
NAMPA SCHOOL DISTRICT NO. 131,	)	
	)	
Respondent-Appellant.	)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that I have personally served or had delivered by United State's Mail, postage prepaid, one copy of the Clerk's Record and one copy of the Reporter's Transcript to the attorney of record to each party as follows:

William F. Yost and Chip Giles, YOST LAW, PLLC.

Paul J. Stark, Idaho Education Association

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 5 day of December, 2013.

CHRIS YAMAMOTO, Clerk of the District  
Court of the Third Judicial  
District of the State of Idaho,  
in and for the County of Canyon.

By:  Deputy

CERTIFICATE OF SERVICE